119-149

# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1885.**

No. ~~282.~~ 43

THE MINNEAPOLIS AND ST. LOUIS RAILWAY COMPANY, PLAINTIFF IN ERROR,

*vs.*

THE COLUMBUS ROLLING MILL COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

**FILED SEPTEMBER 14, 1883.**

# SUPREME COURT OF THE UNITED STATES.

## OCTOBER TERM, 1885.

## No. 282.

---

THE MINNEAPOLIS AND ST. LOUIS RAILWAY COMPANY, PLAINTIFF IN ERROR,

*vs.*

THE COLUMBUS ROLLING MILL COMPANY.

---

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

---

INDEX.


| | Original. | Print. |
|---|---|---|
| Caption | 1 | 1 |
| Petition | 1 | 1 |
| Summons | 3 | 2 |
| Marshal's return | 5 | 2 |
| Answer | 5 | 3 |
| Order granting leave to amend petition | 6 | 3 |
| Amended petition | 7 | 4 |
| Motion to strike amended petition | 9 | 5 |
| Order " " | 10 | 5 |
| Hearing | 10½ | 6 |
| Verdict | 10¾ | 6 |
| Motion for new trial | 11 | 7 |
| Judgment | 13 | 8 |
| Bill of exceptions | 15 | 8 |
| Evidence for plaintiff | 17 | 9 |
| Testimony of Charles F. Hatch | 17 | 9 |
| T. B. Woolsey | 81 | 41 |
| Exhibit "A"—Telegram of C. F. Hatch to Rolling Mill Co., December 5, 1879 | 90 | 45 |
| "B"—Letter of W. A. Harrison to Chas. F. Hatch, December 8, 1879 | 91 | 46 |


JUDD & DETWEILER, PRINTERS, WASHINGTON.

| | Original. | Print. |
|---|---|---|
| Exhibit "C"—Letter of Chas. F. Hatch to W. A. Harrison, December 16, —— | 92 | 46 |
| "D"—Letter of Chas F. Hatch to W. A. Harrison, December 16, 1879 | 93 | 46 |
| "E"—Telegram of Columbus Rolling Mill Co. to C. F. Hatch, December 18, —— | 94 | 47 |
| "F"—Telegram of C. F. Hatch to Columbus Rolling Mill, December 19, 1879 | 95 | 47 |
| "G"—Telegram of C. F. Hatch to Columbus Rolling Mill Co., December 19, —— | 96 | 47 |
| "H"—Telegram of C. F. Hatch to Columbus Rolling Mill Co., December 22, —— | 97 | 48 |
| "I"—Letter of Chas. F. Hatch to W. A. Harrison, December 26, 1879 | 98 | 48 |
| "K"—Telegram of C. F. Hatch to W. A. Harrison, ——— —, —— | 99 | 49 |
| "L"—Telegram of C. F. Hatch to Columbus Rolling Mill, December 30, —— | 100 | 49 |
| "M"—Telegram of W. A. Harrison to C. F. Hatch, December 30, —— | 101 | 49 |
| "N"—Letter of W. A. Harrison to Chas. F. Hatch, December 29, 1879 | 102 | 50 |
| "O"—Telegram of C. F. Hatch to W. A. Harrison, ——— —, —— | 103 | 50 |
| "P"—Telegram of C. F. Hatch to W. A. Harrison, ——— —, —— | 104 | 50 |
| "Q"—Notice of Columbus Rolling Mill Co. to M. & St. L. R'y Co., January 19, 1880 | 105 | 51 |
| "R"—Notice of M. & St. L. R'y Co. to Columbus Rolling Mill Co., ——— —, —— | 106 | 51 |
| Agreement as to facts | 108 | 52 |
| Testimony of H. A. V. Post | 115 | 56 |
| Orlando Smith | 123 | 60 |
| Evidence for defendant | 145 | 72 |
| Testimony of Samuel Thomas | 145 | 72 |
| W. A. Harrison | 162 | 81 |
| Archer N. Martin | 173 | 87 |
| Stipulation as to testimony, &c. | 178 | 90 |
| Charge to jury | 183 | 91 |
| Certificate to bill of exceptions | 200 | 99 |
| Clerk's certificate | 201 | 100 |
| Citation | 202 | 100 |
| Service of citation | 203 | 101 |
| Writ of error | 204 | 101 |
| Assignment of errors | 206 | 102 |

1 At a stated term of the circuit court of the United States within and for the sixth judicial circuit and eastern division of the southern district of Ohio, begun and held at the court-rooms, in the city of Columbus on the first Tuesday of December, being the sixth day of that month, in the year of our Lord one thousand eight hundred and eighty-one, and of the Independence of the United States of America the one hundred and sixth.

Present: The Honorable Philip B. Swing, judge.

Among the proceedings had were the following, to wit:

THE MINNEAPOLIS AND ST. LOUIS RAILWAY COMPANY

*vs.*

THE COLUMBUS ROLLING-MILL COMPANY.

Be it remembered that heretofore, to wit, on the eighth day of May, in the year of our Lord one thousand eight hundred and eighty, came the plaintiff, by its attorney, and filed in the clerk's office of the court aforesaid in said cause its certain petition, clothed in the words and figures following, to wit:

Circuit Court of the United States, Southern District of Ohio, Eastern Division.

THE MINNEAPOLIS AND ST. LOUIS RAILWAY COMPANY, Plaintiff,

*against*

THE COLUMBUS ROLLING-MILL COMPANY, Defendant.

2 The plaintiff says it is an incorporated company, duly organized as such under the laws of the State of Minnesota, and is a citizen of said State, doing business and having its principal office at Minneapolis, in said State, under the said name of The Minneapolis and St. Louis Railway Company. The said defendant is an incorporated company, duly organized as such under the laws of the State of Ohio, doing business and having its principal office at Columbus, in said State of Ohio, under its said name of the Columbus Rolling-Mill Company, and as such is a citizen of said State and a resident of the southern district of Ohio, and the eastern division thereof.

The plaintiff further says that on the 19th day of December, 1879, at the said city of Columbus, Ohio, in said southern district of Ohio, and in the eastern division thereof, the said plaintiff and defendant mutually bargained and agreed with each other, as follows: The said plaintiff agreed to buy of the said defendant, and the said defendant then sold to the said plaintiff, two thousand tons of iron rails of the weight of fifty pounds per yard, at the price of $54 per ton gross, to be delivered free on board cars at the mill of said defendant at Columbus, Ohio, in the month of March following, to wit, in the month of March, 1880, and to be paid for by said plaintiff in cash when so delivered. The said plaintiff has performed the conditions of said agreement on its part, and was always ready and willing to accept the said iron rails, and to pay for the same according to the terms of said agreement, of which the said defendant had due

notice. Yet the said defendant did not deliver the said iron
3 rails, or any part thereof, to said plaintiff free on board cars at its mill at Columbus, Ohio, in the month of March, 1880, though duly requested thereto, but wholly neglected and refused so to do, to the damage of said plaintiff in the sum of $32,000.00, for which it now prays judgment and all other proper relief.

By C. N. OLDS,
*Pl'ff's Att'y.*

THE STATE OF MINNESOTA, } ss:
*Hennepin County,* }

Charles F. Hatch, being duly sworn, says: He is the authorized agent of said plaintiff, The Minneapolis and St. Louis Railway Company, a corporation under the laws of the State of Minnesota, and he believes the statements of the foregoing petition to be true.

CHAS. F. HATCH.

Sworn to before me, and signed in my presence, this 6th day of May, A. D. 1880.

M. P. HAWKINS,
*Notary Public, Hennepin Co., Minn.*

And thereupon there was issued out of the clerk's office of the court aforesaid, in said cause, one certain writ of summons, directed to the marshall of this district against said defendant, clothed in the words and figures following, to wit:

UNITED STATES OF AMERICA, } ss:
*Southern District of Ohio, Eastern Division,* }

4 The President of the United States of America to the marshall of the southern district of Ohio, Greeting:

You are hereby commanded to summon The Columbus Rolling Mill Company (Columbus), a corporation, citizen of, and resident in, the State of Ohio, if it be found in your district, to be and appear in the circuit court of the United States for the southern district of Ohio, eastern division, aforesaid, at Columbus, on the fourth Tuesday in the month of May, 1880, to answer unto The Minneapolis and St. Louis Railway Company, citizen of, and resident in, the State of Minnesota, in civil action for money only.

And have you then and there this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the United States, this 8th day of May, A. D. 1880, and in the 104th year of the Independence of the United States of America.

[SEAL.] WM. C. HOWARD, *Clerk.*

Upon said writ was the following endorsement: Civil action for money only. Amount claimed, $32,000.00, as damages for breach of contract, for which judgment may be taken, unless you answer herein on or before the 2nd Tuesday of June, A. D. 1880.

5 And afterwards, to wit, on the eleventh day of May, in the year last aforesaid, came the marshall of this district to whom

said writ of summons was in manner and form aforesaid directed, and returned the same unto the clerk's office of the court aforesaid, with his proceedings endorsed thereon, clothed in the words and figures following, to wit:

Received this writ at Columbus, O., at 5 o'clock p. m. on the eighth day of May, 1880, and served the same in Franklin county on the within-named Columbus Rolling Mill Company by delivering a true copy of this writ to D. A. Gray, as president, at 11.40 o'clock a. m., and a true copy of this writ to U. D. Tunsey, as secretary, at 11.30 o'clock a. m. personally on the 11th day of May, 1880.

J. E. ULLERY,
*U. S. Marshall.*
By J. A. ULLERY. *Deputy.*

And afterwards, to wit, on the 8th day of June, in the year last aforesaid, there was filed in the clerk's office of the court aforesaid in said cause a certain answer, clothed in the words and figures following, to wit:

*Answer.*

Circuit Court of the United States, Southern District of Ohio, Eastern Division.

THE MINNEAPOLIS AND ST. LOUIS RAILWAY COMPANY, Plaintiff,
*against*
THE COLUMBUS ROLLING-MILL COMPANY, Defendant.

The defendant, for its answer to plaintiff's petition, says:
6 It admits that the plaintiff and defendants are incorporated companies doing business and having their principal offices respectively in the States named in the petition, and that as such they are citizens and residents of said States respectively.

The defendant further admits that it did not deliver two thousand tons, or any other quantity, of iron rails to the plaintiff.

The defendant denies each and every allegation in plaintiff's petition which is not hereinabove expressly admitted.

HARRISON, OLDS & MARSH,
*Att'ys for Defendant.*

STATE OF OHIO, } *ss:*
*Franklin County,* }

William H. Harrison, being first duly sworn, says: That he is an officer, to wit, the treasurer of the above-named defendant, The Columbus Rolling-Mill Company, a corporation under the laws of the State of Ohio, and that he believes the statements and denials of the foregoing answer to be true.

W. A. HARRISON.

Sworn to before me by said William A. Harrison, and by him signed in my presence, this 8th day of May, 1880.

ALEX. W. KRUMM,
*Notary Public, Franklin County, Ohio.*

And afterwards, to wit, on the seventeenth day of December, in the year last aforesaid, an entry was made upon the journal of said court in said cause, clothed in the following words and figures, to wit:

THE MINNEAPOLIS AND ST. LOUIS RAILWAY COMPANY, Pl'ff,
*against*
THE COLUMBUS ROLLING-MILL COMPANY, Defendant.

7 This day came the parties, by counsel, and on motion of plaintiff leave is given the plaintiff to amend its petition in thirty days, and thereupon this cause is continued at the costs of the plaintiff.

And afterwards, to wit, on the twenty-second day of December, in the year last aforesaid, there was filed in the clerk's office of the court aforesaid, in said cause, a certain amended petition clothed in the words and figures following, to wit:

THE MINNEAPOLIS AND ST. LOUIS RAILWAY COMPANY, Plaintiff,
*against*
THE COLUMBUS ROLLING-MILL COMPANY, Defendant.

And now comes the plaintiff, and by leave of the court, and amends its petition by substituting for the last paragraph therein the following:

Yet the said defendant did not deliver the said iron rails, or any part thereof, to the said plaintiff free on board cars at the mills, at Columbus, Ohio, in the month of March, 1880, but, on the contrary thereof, on the 19th day of January, 1880, notified the said plaintiff that it repudiated the said contract, and refused to execute and perform the same, or to be bound thereby, and did in fact thenceforth wholly neglect and refuse to recognize or to execute and perform the same; whereupon the said pl'ff notified the said defendant that it would go into the open market and purchase said iron rails on the best term obtainable, and hold the said defendant responsible
8 for all damages resulting therefrom; the purchase of said iron rails then being necessary for the uses and purposes of the plaintiff in the construction of its railroad then in process of construction, and for which uses and purposes the said contract with the defendant was made, as was well known to said defendant when said contract was made and when the same was repudiated as aforesaid; and the plaintiff says that by reason of said refusal of said defendant to recognize and execute said contract the said plaintiff was compelled to, and did, on the 26th day of January, 1880, purchase for the uses and purposes aforesaid one thousand tons of such iron rails at and for the price of $70.00 per ton gross, that being the fair market price and the best terms obtainable in the market at that time; and the plaintiff further avers that during the month of March, 1880, at Columbus, Ohio, the said iron rails described in the said contract, of the weight of fifty pounds per yard, were fairly worth and of the market value of $70.00 per ton gross. Wherefore the plaintiff says that by reason of the premises it has sustained

damages in the sum of $32,000.00, for which it now prays judgment and all other proper relief.

C. N. OLDS,
*Pl'ff's Att'y.*

THE STATE OF MINNESOTA, } ss:
*Hennepin County,* }

Chas. F. Hatch, being duly sworn, says: He is the authorized agent of the said plaintiff, The Minneapolis and St. Louis Railway Company, a corporation under the laws of the State of Minnesota, and he believes the statements contained in the foregoing
9 amendment and in the original petition, as thus amended to be true.

CHAS. F. HATCH.

Sworn to before me, and signed in my presence, this 20th day of December, A. D. 1880.

JNO. N. SHAW.
*Notary Public, Hennepin County, Minnesota.*

And afterwards, to wit, on the twenty-ninth day of March, in the year of our Lord one thousand eight hundred and eighty-one, was filed in the clerk's office of the court aforesaid in said cause a certain motion, clothed in the words and figures following, to wit:

Circuit Court of the United States, Southern District of Ohio, Eastern Division.

THE MINNEAPOLIS AND ST. LOUIS RAILWAY COMPANY, Pl'ff,
*against*
THE COLUMBUS ROLLING-MILL COMPANY, Defendant.

Now comes the defendant and moves the court to strike from the files the amendment to the petition, because—

1st. The additional facts set forth in said amendment and substituted for the last paragraph of the petition are immaterial and irrelevant.

2nd. Said amendment is not such as ought to be allowed.

HARRISON, OLDS AND MARSH,
*Att'ys for Defendants.*

10 And afterwards, to wit, on the eighth day of June, in the year last aforesaid, an entry was made upon the journal of said court in said cause clothed in the words and figures, following, to wit:

MINNEAPOLIS AND ST. LOUIS RAILWAY COMPANY
*vs.*
COLUMBUS ROLLING-MILL COMPANY.

This cause came on to be heard upon the motion of the defendant to strike the amendment to the petition, heretofore filed herein, from the files, and was argued by counsel, and submitted to the court; upon consideration whereof the said motion is sustained. It is

therefore ordered by the court that the said amendment to the petition be, and the same is hereby, stricken from the files; to all of which plaintiff excepts, and leave is given plaintiff to file its amended petition in sixty days.

10½ And afterwards, to wit, on the sixth day of December, A. D. one thousand eight hundred and eighty-one, there was entered upon the journal of said court the following entry:

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY
*vs.*
THE COLUMBUS ROLLING-MILL COMPANY. } Money.

This day came the parties, by their attorneys, and thereupon to try the issue a jury being called came, to wit, George Butler, Joseph Brantner, J. G. Barker, Thomas Clark, Henry Haskins. D. Hahn, Sr., William F. Houson, R. H. Henderson, R. P. Janes, J. D. Irwin, John Keenan, George P. Stevens, who were duly empan-eled and sworn well and truly to try the issue joined between the parties, and the testimony not being finished, the court discharged the jury until to-morrow morning at nine o'clock.

And subsequently, to wit, on the 7th day of December, 1881, the following was entered upon the journal of said court:

This day again came the parties, by their attorneys, and also the jurors heretofore empaneled and sworn herein, and the testimony not being concluded, the court discharged the jury until to-morrow morning at 9 o'clock, to which time this cause is continued.

Whereupon court adjourned until to-morrow morning at 9 o'clock.

10¾ And subsequently, to wit, on the 8th day of December' 1881, the following was entered upon the journal:

This day again came the parties, by their attorneys, and also the jurors heretofore empaneled and sworn herein, and the testimony being finished, but the argument of counsel not concluded, the court discharged the jury until to-morrow morning at 9 o'clock, to which time this case is continued.

Whereupon court adjourned until to-morrow morning at 9 o'clock.

And subsequently, on the 9th day of December, 1881, the following entry was made on the journal:

This day again came the parties, by their attorneys, and also the jurors heretofore empaneled and sworn herein, and having heard the testimony, the argument of counsel, and the charge of the court, retired to their room, attended by an officer of this court, to deliberate upon a verdict.

And upon the 10th day of December, 1881, the following entry was made upon the journal:

This day again came the parties, by their attorneys, and also the jurors heretofore empaneled and sworn herein, who, having heard the testimony, the argument of counsel, and the charge of the court, upon their oaths, do find the issues to be in favor of the defendant. Whereupon the plaintiff, by its attorney, gave notice of a motion for a new trial.

11 And afterwards, to wit, on the thirteenth day of December, in the year last aforesaid, there was filed in the clerk's office of the court aforesaid in said cause a certain motion for a new trial, clothed in the words and figures following, to wit:

*Motion.*

In the Circuit Court of the United States in and for the Eastern Division of the Southern District of Ohio. December Term, A. D. 1881.

THE MINNEAPOLIS AND ST. LOUIS RAILWAY COMPANY, Plaintiff,
*against*
THE COLUMBUS ROLLING-MILL COMPANY, Defendant.

The said plaintiff now comes and moves the court to vacate and set aside the verdict of the jury rendered in this action at this present term of said court, to wit, on December 10th, 1881, and to grant to said plaintiff a new trial in said action for the following causes and reasons affecting materially the substantial rights of said plaintiff herein, viz:

First. The said verdict is not sustained by sufficient evidence and is contrary to the evidence. The verdict should have been for the plaintiff.

Second. The said verdict is contrary to law.

Third. The court erred at the trial of said action in sustaining objections to evidence offered by said plaintiff and in overruling objections to evidence offered by said defendant.

12 Fourth. The court erred at the trial of said action in its charge to the jury in particulars excepted to by said plaintiff at the time, and also by refusing to charge the jury as requested by said plaintiff, to which refusal to charge as requested said plaintiff excepted at the time.

Fifth. The court erred at the trial of said action in charging the jury that "in law the direction of the plaintiff (in its telegram and letter of Dec. 16th, 1879, to the defendant) to book their order for 1,200 tons of iron was the offer of a separate and independent propositition, and in the light of the authorities which I have read that was a rejection of the offer which had been made by the defendant;" and in charging the jury that "if it be found that this telegram and this letter was a reply to that offer of the 8th of December then it was submitting a new proposition which in law amounted to a rejection of the first proposition (referring to said defendant's proposition of December 8th, 1879), and it was not in the power of the plaintiff after that to have accepted the proposition as originally made," to which charge of the court the pl'ff excepted at the time.

Sixth. The court erred at the said trial in refusing to charge the jury as requested by the plaintiff, as follows:

"Should you find that the plaintiff's telegram and letter of December 16th, requesting the defendant to book plaintiff's order for *for* 1,200 tons of iron rails as per defendant's favor of the 8th, was

intended by the plaintiff as an order for 1,200 tons of the
13 2,000 tons offered by the defendant in its letter of the 8th December to the plaintiff, such order for 1,200 tons is not in law a rejection of the defendant's said offer; if you further find that the plaintiff did not intend it to be such rejection, but intended to give further order for the residue of said 2,000 tons in acceptance of said offer prior to December 20th, the time limited in said offer for such acceptance, and did so."

To which refusal of the court to charge the jury as thus requested the plaintiff at the time excepted.

Seventh. Other errors apparent on the record of said action.

Dec. 13th, 1881.

C. W. OLDS,
*Att'y for Pl'ff.*

And afterwards, to wit, on the 15th day of December, in the year of our Lord one thousand eight hundred and eighty-one, an entry was made upon the journal of said court in said cause, clothed in the words and figures following to wit:

THE MINNEAPOLIS AND ST. LOUIS RAILWAY COMPANY
*vs.*
THE COLUMBUS ROLLING-MILL COMPANY. } Money.

This day came again the parties, by their attorneys, and this cause came on for hearing on the motion of said plaintiff to set aside the verdict rendered on a former day of this term for the defendant, and for a new trial herein, for reasons stated in said motion, and
14 was argued by counsel and submitted to the court. On consideration whereof it is ordered by the court that said motion be, and the same is hereby, overruled. To which order and action of the court in overruling said motion the said plaintiff excepts and presents to the court its certain bill of exceptions on that behalf, and prays that the same be allowed, signed, and sealed, and ordered to be placed on file and made a part of the record in this cause, all of which is done and ordered accordingly. It is therefore considered by the court that the said defendant go hence without day and recover of the said plaintiff its costs herein expended, taxed to $——; to which said judgment the plaintiff also excepts.

The said bill of exceptions so presented, allowed, and filed on said 15th day of December, in the year of our Lord one thousand eight hundred and eighty-one, is clothed in the words and figures following, to wit:

15–16 *Bill of Exceptions.*

Circuit Court of the United States, Southern District of Ohio. Eastern Division.

THE MINNEAPOLIS AND ST. LOUIS RAILWAY COMPANY, Plaintiff,
*against*
THE COLUMBUS ROLLING-MILL COMPANY, Defendant.

Be it remembered that the trial of this cause at the December

term, A. D. 1881, of said court, the said trial commencing on the 6th day of December, A. D. 1881, and continuing until and including the 15th day of said month, the said plaintiff to maintain the issue joined on its part, gave in evidence to the jury the testimony of witnesses and certain paper writings connected therewith, being copies of letters, telegrams, &c., which testimony of witnesses and copies of papers writings are herein set forth in full, and are as follows:

17 And the said Charles F. Hatch, being of lawful age and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Charles F. Hatch, and he did thereupon depose and testify and say as follows:

First Interrogatory. What is your name, age, place of residence, and occupation?

Answer. Charles F. Hatch; age, forty-six (46); reside in the city of Minneapolis; I am the general manager of the Minneapolis and St. Louis Railway Company.

Second Interrogatory. Are you acquainted with the parties to this suit, or either of them; if so, how long have you known them, or either of them?

Answer. I know The Minneapolis and St. Louis Railway
18 Company, the plaintiff; I have been acquainted with it two years and a half. I am its general manager, and have been so for two years and a half. I do not know personally any parties connected with The Columbus Rolling-Mill Company, the defendant.

Third interrogatory. State whether or not pl'ff and defendant have had any business relations or transactions together, during the year one thousand eight hundred and seventy-nine, to your knowledge; if so, what they were when they were had, and what connection, if any, you had with them.

Answer. In the early part of December, one thousand eight hundred and seventy-nine, I sent to the Columbus Rolling-Mill Company, asking them to quote me prices for two to five thousand tons of iron rails, to be delivered in March, A. D. 1880. I have before me my letter-book, in which is a letter-press copy of the letter sent to the Columbus Rolling-Mill Company, dated December 5th, 1879, a copy of which I produce and mark Exhibit "A," to be attached to my deposition. To that letter I received a reply dated December 8th, one thousand eight hundred and seventy-nine, signed W. A. Harrison, secretary, which original letter I offer, marked Exhibit "B," to be attached to my deposition—offering to sell two to five thousand tons of *of* iron rails on the terms therein expressed. On the sixteenth of December, one thousand eight hundred and
19 seventy-nine, I sent a telegram to W. A. Harrison, the secretary of the Columbus Rolling-Mill Company, a copy of which I produce and mark Exhibit "C," to be attached to my deposition; the original telegram is written in my telegram book, and I have it before me. We have a telegraph operator in our office who receives

and send- messages. At that time Mr. F. G. Stringham was the operator, and I delivered the dispatch to him to be forwarded. On the same day December 16th, I wrote a letter to W. A. Harrison, secretary of the Columbus Rolling-Mill Company, Columbus, Ohio, a copy of which I produce and mark Exhibit "D," to be attached to my deposition. I have before me my letter-book, in which is a letter-press copy of this letter. On the 18th of December, A. D. 1879, I received a telegram signed Columbus Rolling-Mill Company, a copy of which I produce and mark Exhibit "E," to be attached to my deposition. The original telegram delivered me, is in my telegram book which I have before me, in, I believe, Mr. Stringham's handwriting. It is my custom to keep a special book in my office for telegrams sent and received, and this book I have with me, is the book which was in use at that time. On the 19th of December, 1879, I sent a telegram to Columbus Rolling-Mill Company, Columbus, Ohio, a copy of which I produce marked Exhibit "F," to be attached to my deposition; I have the original of this telegram before me in the telegram book before referred to. On the 19th of December, 1879,
20 I also sent, and after reading the telegram above referred to, another telegram to the Columbus Rolling-Mill Company, a copy of which I produce marked Exhibit "G," to be attached to my deposition. The original of that telegram is in my telegram book, which I have before me. On the 22nd of December, 1879, I sent another telegram to the Columbus rolling-mill, Columbus, Ohio, a copy of which I produce marked Exhibit "H," to be attached to my deposition. The original of this telegram is in my telegram book, which I have before me. December 26th, 1879, I wrote a letter to W. A. Harrison, secretary, &c., Columbus, Ohio, a copy of which I produce marked Exhibit "I," to be attached to my deposition. I have before me my letter-book in which is a letter-press copy of the letter. On the same day, December 26th, 1879, I sent a telegram to W. A. Harris, secretary rolling-mill, Columbus, O., a copy of which I produce and mark Exhibit "K," to be attached to my deposition. I have before me my telegram book in which is this original message. December 30th, 1879, I sent another telegram to Columbus Rolling-Mill Company, Columbus, Ohio, a copy of which I produce and mark Exhibit "L," to be attached to my deposition. I have before me my telegram book in which is the original of this message. On the same day, December 30th, 1879, I received a telegram signed W. A. Harrison, a copy of which I produce and mark Exhibit "M," to be attached to my deposition. The original, as received by me, is in my telegram book, which is before me, in the handwriting of
21 Mr. Hill, our telegraph operator at that time. I received a letter dated December 29th, 1879, signed W. A. Harrison, secretary, which I here produce and mark Exhibit "N," to be attached to my deposition. I received that letter about January 1st, 1880. On the 10th of January, 1880, I sent a telegram to T. A. Harrison, Columbus, Ohio, a copy of which I produce and mark Exhibit "O," to be attached to my deposition. I have before me in my telegram book the original of this telegram. This message should have been addressed to W. A. Harrison instead of T. A. Harrison,

and was intended for W. A. Harrison, secretary of the Columbus Rolling Mill Company. January 13th, 1880, I sent another telegram to T. A. Harrison, Columbus, Ohio, a copy of which I produce and mark Exhibit "P," to be attached to my deposition. I have before me my telegram book in which is this message. This message was addressed to T. A. Harrison but was intended for W. A. Harrison, secretary of the Columbus Rolling Mill Company, Columbus, Ohio. The letter-press copy of the original of the letter marked Exhibit "A" is on page 493 of my letter-book number three. The original of Exhibit "C" is in my telegram book in use between 5th of November, 1879, and December 22nd, 1879, page 132. The letter-press copy of the letter referred to in Exhibit "D" is in my letter-book number four, on page 80, that is to say the letter-press copy of my letter of December 16th, 1879, of which Exhibit "D" is a copy. The telegram of December 18th, 1879, signed Columbus Rolling-Mill Company, a copy of which is hereto attached marked Exhibit "E," is on the same telegraph book on page 141. My message to
22 Columbus rolling-mill, dated December 19th, 1879, of which Exhibit "F" is a copy, is on page 142 of the same telegraph-book.

My message of December 19th, 1879, to Columbus Rolling-Mill, of which Exhibit "G" is a copy, is on page 146 of the same telegraph book.

My message of December 22nd, 1879, to the Columbus Rolling-Mill, of which Exhibit "H" is a copy, is on page 2 of my telegram book, in use between December 22nd, 1879, and February 23rd, 1880. The letter-press copy of my letter of December 26th, 1879, of which Exhibit I is a copy, is on page 112 of my letter book, number four. My telegram of December 26th, 1879, to W. A. Harrison, of which Exhibit "K" is a copy, is on page 14 of the last-named telegram book.

My telegram of December 30th, 1879, to the Columbus Rolling-Mill, of which Exhibit "L" is a copy, is on page 24 of the last-named telegraph book. The telegram of December 30th, 1879, signed by W. A. Harrison, of which Exhibit "N" is a copy, is on page 25 of the last-named telegram book. My telegram of January 10th, 1880, to I. A. Harrison, of which Exhibit "O" is a copy, is on page 40 of the last-named telegram book.

My telegram of January 13th, 1880, to I. A. Harrison, of which Exhibit "P" is a copy, is on page 44 of the last-named telegram book.

In my telegram of December 19th, 1879, to defendant, I referred to their letter of December 6th, which should have been De-
23 cember 8th, and is Exhibit "B." I had received no letter from defendant dated December 6th.

I here produce and exhibit to the notary the letter books, two (2) in number, and the two (2) telegram books, for inspection and identification, and for the purpose of having the notary make, compare, and certify true copies of the letters and telegrams therein referred to by me, and ask the notary to mark said books for identification.

The books produced by witness are marked as follows: Letter

book number three is marked "W;" letter book number four is marked "X;" telegram book produced by witness, and by him said to have been in use from November 5th, 1879, to December 22nd, 1879, is marked "Y," and telegram book produced by witness, and by him said to have been in use from December 22nd, 1879, to February 23rd, 1880, is marked "Z."

I also certify that I have carefully examined and compared Exhibits "A," "C," "D," "E," "F," "G," "H," "I," "K," "L," "M," "O," and "P," with the originals thereof, respectively, in books marked "W," "X," "Y," and "Z," and find the same to be in all respects true and correct copies, and have so certified on each of said exhibits. EDWARD W. JOHNSON, *Notary.*

Plaintiff's attorneys offer in evidence, in connection with the answer of the witness to the last interrogatory, the said Exhibits marked "A," "B," "C," "D," "E," "F," "G," "H," "I," "K," "L," "M," "N," "O," and "P."

The attorney for defendant objects to so much of the foregoing answer as purports to give parol testimony as to the contents
24 of written instruments, and to so much of the foregoing answer and exhibits as consists of secondary evidence of paper writings, as incompetent.

Fourth interrogatory. Have you had, or has the plaintiff had, any other or further correspondence or communication with the defendant with relation to the subject-matter of the letters and telegrams referred to in your answer to the preceding interrogatory? If so, give the same fully.

Answer. About the middle of January, 1880, I sent Mr. I. B. Woolsey, the travelling agent for the plaintiff, to Columbus to see the defendant company to demand a recognition of the contract for the rails, and to notify them that in case the rails were not delivered as per contract we should hold them responsible for damages, and should go into the open market to purchase the rails on their account on the best terms obtainable, if they failed or refused to recognize the contract. Mr. Woolsey returned, bringing with him this letter, dated January 19th, 1880, signed Columbus Rolling-Mill Company, Samuel Thomas, treasurer, which letter I offer in evidence and mark it Exhibit "Q," and ask to have it attached to my deposition, and ask the notary to identify it and mark it such exhibit., (The exhibit last offered is identified by the notary, and marked by him Exhibit "Q," and he has thereon written his name, Edward M. Johnson, notary.) With the exception of the foregoing, and what passed between Mr. Woolsey and the defendant company, we
25 had no further communication with the defendant, except that about the first of May some telegrams passed between us relating to the purchase of some additional iron from defendant, which resulted in nothing.

Defendant's attorneys object to so much of the foregoing answer which relates to the purpose for which the witness sent I. B. Woolsey to Columbus, and to what passed between I. B. Woolsey and defendant, as incompetent.

Fifth interrogatory. Have you or the plaintiff ever received, or has the defendant ever delivered for plaintiff, on cars at defendant's mill, the two thousand tons of rails ordered by your telegraph message of December 19th, 1879, or any portion thereof?

Answer. Plaintiff has never received any portion of the iron ordered; neither has the defendant company, so far as I know, ever delivered any iron rails on board cars at Columbus for plaintiff under this order.

Sixth interrogatory. What, if anything, was done by you or the plaintiff with relation to supplying the place of the two thousand tons of iron rails ordered by the plaintiff company of defendant?

This question is objected to by defendant's attorney as irrelevant and incompetent.

Answer. I contracted with the Springfield Iron Company, of Springfield, Illinois, for one thousand tons of iron rails, at seventy ($70.00) dollars per ton, delivered on cars at Springfield, Illi-
26 nois. This contract was made January 26th, 1880, and the rails were to be delivered in April, 1880.

Defendant's counsel object to this answer as incompetent and irrelevant.

Seventh interrogatory. Was the iron contracted from the Springfield Iron Company delivered; if so, when, and what did you pay for it?

Defendant's counsel object to this question as incompetent and irrelevant.

Answer. The iron was delivered, nearly all of it, in the month of April, 1880, and I paid the contract price—seventy ($70.00) dollars per ton—for it on the cars at Springfield.

Defendant's counsel object to this answer as incompetent and irrelevant.

Eighth interrogatory. For what purpose was the iron ordered by you of defendant designed; and why did you supply its place to the extent stated by you?

Defendant's counsel object to this question as irrelevant and incompetent.

Answer. The iron was ordered to lay upon the extension of the plaintiff's road in the State of Iowa—main track and necessary side tracks. I contracted with the Springfield company for only one-half the amount, because I found the price of iron so high, and delayed getting what I might need till iron should be lower.

Defendant's counsel object to this answer as irrelevant and incompetent.

27 Ninth interrogatory. What kind of rails did you purchase from the Springfield Iron Company?

Defendant's counsel object to this question as irrelevant and incompetent.

Answer. They were the same kind of rails ordered by plaintiff from defendant company—weighing fifty pounds to the yard.

Defendant's counsel object to this answer as incompetent and irrelevant.

Tenth interrogatory. Do you know the market value of such rails during the months of January, February, and March, 1880, at Columbus, Ohio, Springfield, Illinois, or at other iron markets in the United States?

Defendant's counsel object to this question as leading, as well as irrelevant and incompetent.

Answer. I do know the market value of such iron rails in the months of January and February for early spring delivery. I do not remember the market value during the month of March.

Eleventh interrogatory. What was the market value of such iron rails during the months of January and February, 1880, for early spring delivery at Columbus, Ohio, Springfield, Illinois, and other iron markets?

Defendant's counsel object to this question as irrelevant and incompetent.

Answer. About ($70.00) seventy dollars a ton.

Defendant's counsel object to this answer as irrelevant and incompetent.

Twelfth interrogatory. State what the necessities of the plaintiff were for such iron rails at the time of your order to the de-
28 fendant, Dec. 19th, 1879, and at the time you purchased the rails of which you have spoken of the Springfield Iron Company.

Defendant's counsel object to this question as irrelevant and incompetent.

Answer. The iron was needed to lay upon the road-bed of the company of plaintiff being built in the State of Iowa—the main tracks and side tracks—and the iron purchased of the Springfield Iron Company was for the same purpose, but mainly to complete its main track.

29 Thirteenth interrogatory. State further what was the necessity of plaintiff to purchase the iron mentioned from the Springfield Iron Company at the time it was purchased, as you have testified?

Defendant's counsel excepts to the foregoing question for the reason that it assumes the existence of a necessity which has not been proven, and is suggestive of the answer; and for the further reason that said question is irrelevant and incompetent.

Plaintiff's counsel withdraw the foregoing question.

Fourteenth interrogatory. State why the plaintiff purchased the iron mentioned by you in your former answer from the Springfield Iron Company at the time such purchase was made.

Defendant's counsel object to this question as irrelevant and incompetent.

Answer. The market for iron at that time was rapidly advancing and the rolling-mills were being filled with orders for spring delivery, and it was necessary to make the contract in order to secure the iron at the time we should actually need it.

30 Defendant's counsel object to this answer as incompetent and irrelevant.

Fifteenth interrogatory. Do you know what is the meaning of the term or of the words and letters "for spot cash," "F. O. C.," used in the defendants letter to you of date, December 8th, 1879? If so, state such meaning.

Defendant's counsel object to this question as incompetent.

[Answer.] I do. "F. O. C." means free on board; that is, the iron rails were to be loaded on cars by defendant at their mill, at Columbus, and "spot cash" means they were entitled to receive pay for the same when so loaded.

Sixteenth interrogatory. State whether after the transmission of your telegram to the defendant, of date December 19th, 1879, a copy of which is marked Exhibit "G," containing order for two thousand (2,000) tons of nails, you received any answer from the defendant to that or any of your subsequent letters, or telegrams, to the defendant, except defendant's letter of December 29th, 1879, to you, marked Exhibit "N," and defendant's telegram to you of December 30th, 1879, a copy of which is marked Exhibit "M."

Answer. I received nothing except the letter of January 19th, 1880, signed Columbus Rolling-Mill Company, Samuel Thomas, treasurer. (Identified as Exhibit "Q.")

Seventeenth interrogatory. In your answer to the four-
31 teenth interrogatory you stated it was necessary to make the contract with the Springfield Iron Company in order to secure the iron at the time plaintiff should actually need it. State what time you referred to in that answer and what that need was.

Defendant's counsel object to this question as irrelevant and incompetent.

Answer. We were building an extension of our road in Iowa, and expected to have the grading done so that we should begin to lay our track early in April, 1880. It was necessary that we should secure the iron, so that there should be no delay in completing the road at the earliest possible time.

Defendant's counsel object to this answer as irrelevant and incompetent.

Eighteenth interrogatory. State whether plaintiff was ready, at any time during the month of March, 1880, to receive from defendant and pay for the two thousand (2,000) tons of iron rails mentioned in plaintiff's order to defendant of December 19th, 1879.

Defendant's counsel object to this question as leading.

Answer. Yes, sir; plaintiff was ready at any time during the month of March, 1880, to receive and pay for that iron.

32 Cross-examination of CHARLES F. HATCH by JOSEPH OLDS, counsel for defendant:

First cross-question. Look at the letter now produced and shown to you, and marked with the letter "A" and the name of the notary on the back thereof, and state whether or not it is the original letter sent by you, and of which Exhibit "A," referred to in your examination-in-chief, purports to be a copy.

Answer. It is the original.

Second cross-question. Look at the letter now produced and shown to you, and marked with the letter "D" and the name of the notary on the back thereof, and state whether or not it is the original letter written and sent by you, and of which Exhibit "D," referred to in your examination-in-chief, purports to be a copy.

Answer. It is the original.

Third cross-question. Who was president of the plaintiff company, The Minneapolis and Saint Louis Railway Company, from the beginning of the year 1879 up to the present time?

Answer. W. D. Washburn.

Fourth cross-question. What authority, if any, had you to negotiate, in behalf of said plaintiff company for the purchase of iron rails at the time mentioned in your examination-in-chief?

33 Plaintiff's counsel object to this question as incompetent and immaterial.

Answer. I had direct authority from the president to negotiate and contract for the lot of iron rails mentioned in my examination-in-chief.

Fifth cross-question. Was the president himself of said company authorized to negotiate and contract for the purchase of iron rails, in behalf of said plaintiff company, throughout the lines mentioned in your examination-in-chief?

Plaintiff's counsel object to this question as incompetent and immaterial.

Answer. He was authorized by the company to construct the extension of the company's line of road in Iowa, which authority included the purchase of iron rails.

Sixth cross-question. Was this authority to construct such extension given to the president by any resolution of the board of directors of said plaintiff company?

Plaintiff's counsel object to this question as incompetent and immaterial.

Answer. Yes, sir.

Seventh cross-question. In negotiating or contracting for the material for such construction, did you or not act under the direction and supervision of such president, W. D. Washburn?

Plaintiff's counsel object to this question as incompetent and immaterial.

34 Answer. Yes; I was under his direction and supervision in negotiating and contracting for such material.

Eighth cross-question. Was not the president, W. D. Washburn, authorized by the plaintiff company in negotiating and contracting for iron rails and other material for such extension, to employ such agents, to make and reject such offers, and negotiate such terms as he thought the best?

Plaintiff's counsel object to this question as incompetent and immaterial.

Answer. I presume that might be included in the scope of his authority. Generally, I should say he had such authority, being authorized to construct such extension and do what was necessary for that purpose.

Ninth cross-question. Where was such president, W. D. Washburn, during the months of January and February, 1880?

Plaintiff's counsel object to this question as incompetent and immaterial.

Answer. Nearly all the time during those three months he was in Washington, District of Columbia. I think he was in Minneapolis for a few days about the first of January, and I think he was in New York city a few times during those months.

35 Tenth cross-question. Do you know all the communications which President Washburn had with others in the month of December, 1879, in reference to the purchase of iron rails for such extension from said defendant's company?

Plaintiff's counsel objects to this question as incompetent and immaterial.

Answer. I don't know that he had any communication with any other parties regarding the purchase of iron rails from said defendant company.

Eleventh cross-question. Might he not have had such communication with other parties without your knowledge?

Plaintiff's counsel object to this question as incompetent and immaterial.

[Answer.] It is possible, but I do not think it is probable.

Twelfth cross-question. Was there in December, 1879, more than one rolling-mill in Columbus, Ohio?

Answer. I do not know.

Thirteenth cross-question. Did you know of more than one?

Answer. I did not.

Fourteenth cross-question. Were you not, at the time of your negotiation with the defendant for the purchase of iron rails, in very frequent communication, by letter and telegram, with President Wasburn?

Answer. I was.

36 Fifteenth cross-question. Did you inform the president, W. D. Washburn, of the offer of the defendant contained in their

said letter of December 8th, 1879; and, if so, how soon did you notify him after said letter was received by you?

Plaintiff's counsel object to this question as incompetent and immaterial.

Answer. I notified him of the offer of the defendant almost immediately after its receipt.

Sixteenth cross-question. Did you then inform him of the terms of said offer?

Plaintiff's counsel object to this question as incompetent and immaterial.

Answer. I did.

Seventeenth cross-question. Did you, on the fifteenth or sixteenth of December, 1879, and before you telegraphed to said defendant your order of December 16th for twelve hundred (1,200) tons of rails, March delivery, receive any instructions from said W. D. Washburne in regard to sending such order?

Plaintiff's counsel object to this question as incompetent and immaterial.

Answer. I did.

Eighteenth cross-question. How was such instruction communicated to you—by letter or telegram?

Answer. By telegram.

37 Nineteenth cross-question. When was such telegram sent to and received by you, and from what place?

Answer. December 16th; from Washington.

Twentieth cross-question. Will you please produce the telegram before the notary here?

[Answer.] The telegram is in my telegram book, marked by the notary "Y," on page 133, and is now before me, and is as follows:

"WASHINGTON, *Dec.* 16*th.*

"F. Hatch:

"I think you had better accept Columbus' offer for ten or twelve hundred ton.

"W. D. W."

This telegram was read by the witness, subject to the plaintiff's objection that the said telegram was incompetent and immaterial; and that, subject to such objection, plaintiff consents that the copy above set forth may stand and be used in place of the original for all purposes for which the original is competent and material.

EDWARD M. JOHNSON, *Notary.*

Twentieth and one-half cross-question. What offer is referred to in said telegram as Columbus' offer?

Plaintiff's counsel object to this question as incompetent and immaterial.

Answer. The defendants' offer as contained in their letter of December 8th, 1879.

Twenty-first cross-question. When did you send T. B. Woolsey to Columbus? State the exact date, as near as you can.

38 Answer. I do not remember the exact date; it was about the middle of January, 1880.

Twenty-second cross-question. Did you communicate to the president, W. D. Washburn, the fact and purpose of your sending Mr. Woolsey to Columbus?

Plaintiff's counsel object to this question as incompetent and immaterial.

Answer. I did. I notified Mr. Washburn by letter dated January 17th, 1880.

Twenty-third cross-question. Was not your object in sending Mr. Woolsey to Columbus at that time to get a definite reply to your telegram of December 19th, 1879?

Plaintiff's counsel object to this question as incompetent, immaterial, and not proper cross-examination.

Answer. That was one of the objects.

Twenty-fourth cross-question. Was there occasion or necessity for Mr. Woolsey to go to Columbus for any other purpose than to get a definite reply to those telegrams, and could not any notice have been given to the defendant more easily and cheaply by telegram or letter?

Plaintiff's counsel object to this question as incompetent and immaterial and not proper cross-examination.

Answer. I thought at the time it was necessary to send Mr. Woolsey to Columbus. I had been trying for some time to get a

39 response from them, but could not, and felt willing to incur the expense of sending Mr. Woolsey there.

Twenty-fifth cross-question. You speak in your examination-in-chief about notifying the defendant that the plaintiff would go into the open market to purchase the rails on account of the defendant. What is the open market there referred to?

Answer. The open market there referred to would be any market where iron rails were for sale.

Twenty-sixth cross-question. Were not the markets open for the sale of rails throughout January, February, and March, 1880?

Answer. Yes; I think they were.

Twenty-seventh cross question. Were there not throughout said months great quantities of imported iron rails and domestic iron rails on the market for sale?

Answer. Yes; there were quantities for sale at various places.

Twenty-eighth cross-question. Was not the importation of iron rails into the United States from abroad unusually large during the months of January and February, 1880, on account of the high prices then prevailing here?

Answer. I could not say definitely about that. I know in a general way that there were a great many iron rails imported,

40 but whether they came in the months of January and February I cannot say.

Twenty-ninth cross-question. Did you inquire in said months of January and February about the condition of the iron market and the supply of iron rails for sale?

Answer. I inquired of several iron manufacturers and agents as to the prices of iron. I do not remember that I made any inquiries as to the amount of iron rails on hand for sale.

Thirtieth cross-question. Was not the importation of iron rails so great in the month of January, 1880, and the preceding December, that the price of iron fell rapidly in the early part of February and all through that month and March.

Answer. Prices advanced during the months of December and January, and the price was very stiff in January, and my recollection is that prices did not fall much during the month of February.

Thirty-first cross-question. Of what manufacturers, agents, and dealers did you inquire the price of iron in February?

Plaintiff's counsel object to this question as incompetent and immaterial.

Answer. I can hardly say what particular ones I inquired of in February.

41 Thirty-second cross-question. Were you not at that time and before in the habit of corresponding and dealing with the firm — R. E. Ricker and Company, iron brokers, in New York city?

Plaintiff's counsel object to this question as incompetent and immaterial.

Answer. I was in correspondence with R. E. Ricker and Company. Had no dealings with them; had their prices several times.

Thirty-third cross-question. Did they offer to sell you any iron in February, 1880; and, if so, at what price?

Plaintiff's counsel object to this question as incompetent and immaterial, and not proper cross-examination.

Answer. I think they did quote me prices in February, but I cannot answer this question as to what prices without examination of papers.

Thirty-fourth cross-question. Did not R. E. Ricker and Company offer to sell you in the early part of February, 1880, three thousand (3,000) tons of English rails, 50 lbs. to the yard, for sixty-three and fifty-hundredths ($63.\frac{50}{100}$) dollars per ton, or about that figure?

Plaintiff's counsel object to this question as incompetent and immaterial, and not proper cross-examination.

Answer. I think they did offer us some amount of rails, but the number of tons and price I could not give now without examination of papers.

42 Thirty-fifth cross-question. Was there any difficulty in said months of January or February or March in getting offers from the manufacturers of iron rails and dealers and brokers for the sale at the current prices of any quantity you proposed to buy?

Plaintiff's counsel object to this question as incompetent and immaterial, and not proper cross-examination.

Answer. There was difficulty in contracting for rails for early spring delivery; several of the mills were full of orders, but for May delivery there was no difficulty in buying iron in February.

Thirty-sixth cross-question. What mill, if any, declined to furnish you iron in early spring, or contract for furnishing iron in early spring at the then current prices?

Plaintiff's counsel object to this question as incompetent and immaterial, and not proper cross-examination.

Answer. North Chicago Rolling-Mill Company, the Indianapolis Rolling-Mill Company, and, I think, the Cleveland Rolling-Mill Company declined to contract for early spring delivery.

Thirty-seventh cross-question. Did not the president, W. D. Washburn, advise you in the early part of February that the controlling tendency of the price of iron was downward, and that he had already been offered rails five (5) dollars less than the company's last
43 purchase, and that they had better not be in a hurry about purchasing?

Plaintiff's counsel object to this question as incompetent and immaterial, and not proper cross-examination.

Answer. That is substantially his telegram to me of February 10th, 1880.

Thirty-eighth cross-question. Was not seventy ($70.00) dollars per ton for iron rails, fifty pounds per yard, payable on delivery "F. O. C.," the highest price that such rails reached between the 19th of December, 1879, and the first of April, 1880?

Answer. About as high as any price I knew of.

Thirth-ninth cross-question. Did not the plaintiff on the 8th of December, 1879, purchase of the Springfield Iron Company two thousand (2,000) tons of iron rails, fifty (50) pounds to the yard, to be delivered in January, February, and March, 1880, to be used on said Iowa extension of plaintiff's road?

Plaintiff's counsel object to this question as incompetent and immaterial, and not proper cross-examination, and for the further reason that such purchase, if made, was done long prior to any order from or contract with the defendant.

Answer. We purchased two thousand (2,000) tons of the Springfield Iron Company about the time stated, to be used on our Iowa extension; I cannot give the exact date without referring to the papers.

44 Fortieth cross-question. Did not the plaintiff also buy of said Springfield Iron Company, on or about the 8th day of December, 1879, eleven hundred (1,100) tons more of iron rails, fifty pounds to the yard, for March delivery, and to be used on said Iowa extension?

Plaintiff's counsel object to this question as incompetent and immaterial, and not proper cross-examination, and for the further rea-

son that such purchase, if made, was done long prior to any order from, or contract with, defendant.

Answer. It did.

Forty-first cross-question. Was not the contract of the plaintiff with said Springfield Iron Company, mentioned in your examination-in-chief, for one thousand tons of iron rails, fifty (50) pounds to the yard, made for delivery in April, and for rails to be used on said Iowa extension?

Answer. It was.

Forty-second cross-question. Was not said one thousand (1,000) tons of iron rails last purchased of said Springfield Iron Company enough to fill the gap in the construction of said Iowa extension, and was not said purchase limited to that amount for that reason?

Plaintiff's counsel object to this question as incompetent, immaterial, and not proper cross-examination.

Answer. It was just about enough to complete the gap in
45 the main line, and was limited to that amount, because we thought the price high.

Forty-third cross-question. Were any iron rails delivered to said plaintiff for use on said Iowa extension in the month of March, 1880, other than those above mentioned as purchased from Springfield Iron Company about December 8th, 1879?

Plaintiff's counsel object to this question as incompetent, irrelevant, and immaterial, and not proper cross-examination.

Answer. No; there were none.

Forty-fourth cross-question. Aside from the alleged contract with the defendant, did the plaintiff purchase for March delivery and use on said Iowa extension any iron rails other than those purchased of said Springfield Iron Company about the 8th of December, 1879?

Plaintiff's counsel object to this question as incompetent, irrelevant and immaterial, and not proper cross-examination.

Answer. It did not.

Forty-fifth cross-question. Did the plaintiff purchase for April delivery, and for use on said Iowa extension, any other iron rails than those purchased of said Springfield Iron Company about January 26th, 1880?

Plaintiff's counsel object to this question as incompetent, irrelevant, and immaterial, and not proper cross-examination.

Answer. It did not.

46 Forty-sixth cross-question. Did said plaintiff receive for use, or use, on said Iowa extension, in the month of April, 1880, any other iron rails than those purchased from said Springfield Iron Company, as above mentioned?

Plaintiff's counsel object to this question as incompetent, irrelevant and immaterial, and not proper cross-examination.

Answer. It did not.

Forty-seventh cross-question. Did said plaintiff use on said Iowa extension, in the month of March, 1880, any other iron rails than those purchased from said Springfield Iron Company, about December 8th, 1879?

Plaintiff's counsel object to this question as incompetent, irrelevant and immaterial, and not proper cross-examination.

Answer. It did not.

Forty-eighth cross-question. Did you not, on or about February, 6th, 1880, write to R. E. Ricker and Company, at New York, in regard to the purchase of iron rails?

Plaintiff's counsel object to this question as incompetent, irrelevant and immaterial, and not proper cross-examination.

Answer. I did.

Forty-ninth cross-question. Did you keep a copy of such letter, and if you did, will you please produce it?

47 Answer. I did, and have the copy before me. It is a letter-press copy in my letter-book, which book [is] marked by the notary "X," and is on page 293.

The defendant offers in evidence a copy of said letter, which reads as follows:

"FEB. 6TH, '80.

"Messrs. R. E. Ricker and Co., New York.

"Gents: Yours of the 4th is here. We shall want about 1,000 tons 50-lb. rails for May delivery. Please quote prices, and oblige, yours truly,

"CHAS. F. HATCH, *G. M.*"

This copy is offered in evidence, subject to the plaintiff's objection that the original letter is incompetent and immaterial, and not proper evidence on cross-examination, and subject to such objections. Plaintiff consents that the copy above set forth may stand and be used in place of the original, with the same effect that such original might be used if produced.

EDWARD M. JOHNSON, *Notary.*"

Fiftieth cross-question. Did you not on or about the 11th of February, 1880, receive from R. E. Ricker & Co. a telegram in regard to furnishing you iron rails; if you did, will you please produce such telegram?

Answer. I did receive a telegram from R. E. Ricker and Company February 11th, 1880, and it is here in my telegraph book,

48 which book is marked by the notary "Z," and is on page 143, and reads as follows:

"NEW YORK, 11*th*, 1880.

"C. F. HATCH: Have just received special lot three thousand (3,000) tons 50s iron; arrange Feb., March, and April; will furnish one or three (3) thousand tons at sixty-three fifty ex. ship here. Please reply promptly.

"R. E. RICKER & CO."

This telegram was read by the witness, subject to the plaintiff's objection that the said telegram was incomplete and immaterial, and not proper evidence on cross-examination; and, subject to such objections, plaintiff consents that the copy above set forth may stand and be used in place of the original, with the same effect that such original might be used if produced.

EDWARD M. JOHNSON, *Notary.*

Fifty-first cross-question. Did not your said letter to R. E. Ricker and Company refer to iron wanted for the construction of said Iowa extension?

Plaintiff's counsel object to this question as incompetent, irrelevant and immaterial, and not proper cross-examination.

Answer. Yes, sir; it is.

Fifty-second cross-question. How much iron rails did said
49 plaintiff purchase for delivery in May, 1880, and for use on such Iowa extension?

Plaintiff's counsel object to this question as incompetent, irrelevant and immaterial, and not proper cross-examination.

Answer. It did not purchase any rails for delivery in May, 1880.

Fifty-third cross-question. Could not a lot of a thousand tons of imported iron rails have been readily purchased in the market during the month of February and the fore part of March, 1880, for delivery in said March?

Plaintiff's counsel object to this question as incompetent, irrelevant immaterial, and not proper cross-examination.

Answer. I suppose they might.

Fifty-fourth cross-question. Might not such purchase have been readily made in the months of February or March, 1880, for April delivery?

Plaintiff's counsel object to this question as incompetent, irrelevant and immaterial, and not proper cross-examination.

Answer. I do not know about readily; I think perhaps such a purchase might possibly have been made.

Fifty-fifth cross-question. Did the plaintiff engage or provide any cars for the receipt of said two thousand (2,000) tons of iron rails, or any part thereof, at Columbus, Ohio, in last March?

50 Plaintiff's counsel objects to this question as incompetent and immaterial, and not proper cross-examination.

Answer. It did not, and was never notified that there were any rails ready for shipment from Columbus to said plaintiff last March.

Fifty-sixth cross-question. Did the plaintiff notify the defendant of any readiness on the part of plaintiff to receive said rails, or any part thereof, last March?

Plaintiff's counsel object to this question as incompetent, irrelevant, and immaterial, and not proper cross-examination.

Answer. I did not.

Fifty-seventh cross-question. Was not the plaintiff short of, and in need of, money in the early part of March, 1880?

Plaintiff's counsel object to this question as incompetent, irrelevant, and immaterial, and not proper cross-examination.

Answer. We needed money in March to pay for our construction work and material, except iron. We had provision made for all the money needed to pay for iron needed on our Iowa extension.

Fifty-eighth cross-question. Look at your letter-press copy now shown you of the letter written by you to the Honorable W. D. Washburn, at Washington, dated March 3rd, 1880, and state
51 whether you did not therein write President Washburn as follows:

"Bills for ties, fastenings, f't on iron, &c., &c., are coming in fast, and I may need some more money, but will stand it so long as possible.

"Yours truly, CHAS. F. HATCH, *G. M.*"

Plaintiff's counsel object to this question as incompetent, irrelevant, and immaterial, and not proper cross-examination.

Answer. I did.

Fifty-ninth cross-question. Look at your letter-press copy now shown you of a letter written by you on February 20th, 1880, to Morton, Bliss and Company, of New York, and stating—

"Our contract for iron for completing the Iowa extension *are* with the Springfield Iron Company, Springfield, Illinois. One thousand (1,000) tons to be delivered in February, of which you have been advised. One thousand (1,000) tons in March, probably early part of the month, and one thousand (1,000) tons in April. I will endeavor to notify you more definitely of the time of the March and April deliveries as I hear from the mill. Will you please write to Mr. George M. Brinkerhoff, sec'y Springfield Iron Company, saying that they are authorized to draw on you for the cost of the iron, attaching bills — lading to their drafts. The thousand tons in Feb'y and one thousand tons in March I have contracted at 55.00
52 dollars per ton, and the thousand tons in April are contracted at seventy dollars per ton."

Had the plaintiff in March, 1880, made provision for payment for any other iron rails than those mentioned in the above letter to Morton, Bliss and Company?

Plaintiff's counsel object to this question as incompetent, irrelevant, and immaterial, and not proper cross-examination; object to the letter-press copy shown the witness and the question to each thereof.

Answer. It had.

Sixtieth cross-question. What provision did it make?

Plaintiff's counsel object to this question as incompetent, irrelevant, and immaterial, and not proper cross-examination.

Answer. It had contract with Morton, Bliss and Company, New York city, to pay for the iron needed on its Iowa extension, and also upon what was called its Lake Superior extension from White Bear Lake junction to Taylor Falls, Minnesota.

Sixty-first cross-question. Was Morton, Bliss and Company notified or advised that money would be needed in March, 1880, to pay the defendant for the iron mentioned in the plaintiff's petition; if so, when and how were they so notified and advised?

Plaintiff's counsel object to this question as incompetent, irrelevant, and immaterial and not proper cross-examination.

Answer. They were not. The plaintiff was never advised
53 that any rails were ever delivered on the cars by the defendant for the plaintiff.

Sixty-second cross-question. After the plaintiff had contracted with the Springfield Iron Company for the iron needed and to be used on said Iowa extension in the months of March and April, 1880, did the plaintiff expect Morton, Bliss and Company to provide money to pay said defendant for said two thousand tons of iron rails; and, if so, why did it?

Plaintiffs counsel object to this question as incompetent, irrelevant, and immaterial, and not proper cross-examination.

Answer. It expected Morton, Bliss and Company to pay for any iron rails plaintiff bought or received in the month of March, having a contract with Morton, Bliss and Company to pay for the iron needed on its two extensions, as before stated.

Sixty-third cross-question. Did Morton, Bliss and Company make any provision for the payment to the defendant in March, 1880, for two thousand tons of iron rails?

Plaintiff's counsel object to this question as incompetent, irrelevant, and immaterial, and not proper cross-examination.

Answer. I don't know.

Sixty-fourth cross-question. Under their contract with the plaintiff were Morton, Bliss and Company required to provide money for the payment of iron rails unless notified by the plaintiff that it was needed?

Plaintiff's counsel object to this question as incompetent, irrelevant, and immaterial, and not proper cross-examination.

54 Answer. The contract did not provide for any notice. They agreed to furnish the money required to pay for iron needed for these two extensions spoken of.

Sixty-fifty cross-question. Had plaintiff any special agreement with Morton, Bliss and Company in regard to furnishing the money to make this particular payment to defendant?

Plaintiff's counsel object to this question as incompetent, irrelevant, and immaterial, and not proper cross-examination.

Answer. No especial agreement was necessary, and none was had.

Sixty-sixth cross-question. Did the plaintiff in March, 1880, ex-

pect that said two thousand tons of iron rails would be delivered by defendant and paid for by plaintiff?

Plaintiff's counsel object to this question as incompetent, immaterial, and irrelevant, and not proper cross-examination.

Answer. Plaintiff rather expected that the defendant would not deliver the iron according to contract, but the plaintiff held itself in readiness to pay for the iron if it was delivered.

Sixty-seventh cross-question. Did the plaintiff in March, 1880, still claim that the defendant was bound to deliver that iron in that month?

Answer. It did.

(The further taking of the deposition of the witness, Charles F. Hatch, and the taking of the depositions of T. B. Woolsey and
55 F. G. Stringham, under the written and hereto attached notice, was here adjourned until Friday, the 22nd day of October, A. D. 1880, at 9 o'clock in the forenoon, at the office of Shaw, Levi and Gray, at 245 Nicollett avenue, in the city of Minneapolis, in the county of Hennepin and State of Minnesota.

EDWARD M. JOHNSON, *Notary.*

The further taking of depositions under the hereto attached notice was resumed at 9 o'clock in the forenoon of October 22nd, A. D. 1880, at the office of Shaw, Levi and Gray, at 245 Nicollett avenue, the time and place to which the taking of said depositions was adjourned.

EDWARD M. JOHNSON, *Notary.*

The taking of the deposition of the witness, Charles F. Hatch, was resumed.

Redirect examination:

First redirect interrogatory. In your answer to the seventeenth, eighteenth, and nineteenth cross-interrogatories you testified to instructions and communications received by you on or about December 16th, 1879, from President W. D. Washburn relative to the order upon the defendant for iron rails. State whether you subsequently received from President W. D. Washburn further instructions or communications concerning the purchase from defendant of iron rails; and, if so, at what time and in what form?

Answer. I did. I received a telegram from W. D. Washburn December 19th, 1879.

Second redirect interrogatory. Will you please produce that telegram?

56 Answer. I have the telegram here and produce it, and reads as follows:

"WASHINGTON, D. C., 19*th*, 1879.

"To C. F. Hatch:

"Am inclined to think you better take the full two thousand tons from Columbus.

"W. D. WASHBURN, *Pres't.*"

Defendant's counsel consents that the copy above set forth may stand and be used in place of the original for all purposes for which the original is competent and material, but he objects to the introduction of said telegram in evidence as incompetent and immaterial.

Third redirect interrogatory. Had the plaintiff at that time had, or had there been communicated to President W. D. Washburn, any offers from any parties in Columbus, Ohio, for iron rails at that place other than the offer of and negotiations with the defendant?

Answer. I do not know of any, and do not think there was any.

Fourth redirect interrogatory. In your answer to the twenty-third cross-interrogatory, you state that one of your objects in sending Mr. T. B. Woolsey to Columbus, Ohio, was to get a definite reply to your telegram of December 19th, 1879. State what other objects you had in sending Mr. Woolsey to Columbus, Ohio, and why you wished, or it was necessary for you to have, more definite replies to your said telegrams.

Defendant's counsel object to this question as incompetent and irrelevant.

57 Answer. As I could not get replies to my telegrams and letters from the defendant I suspected that they desired to avoid delivering the iron according to their contract, and it was important for me to know definitely whether I could rely upon receiving the iron according to contract. If there was any doubt about it it was necessary for me to secure iron rails for the completion of our Iowa extension, and I desired to have the defendant notified that we should claim a contract with them, and if they refused or neglected to deliver the iron rails according to the contract the plaintiff would purchase other rails and hold them, the defendants, responsible for damages.

Defendant's counsel object to this answer as irrelevant and incompetent.

Fifth redirect interrogatory. State fully what you know concerning the variation, if any, in the market prices of iron rails during the months of December, 1879, January, February, and March, 1880.

Defendant's counsel object to this question as irrelevant and incompetent.

Answer. In the early part of December, 1879, the market price for iron rails for early spring delivery, say March, 1880, was in the West about fifty-five ($55.00) dollars per ton. The prices at Springfield, Illinois, fifty-five (55) dollars; at Chicago a little more, probably fifty-five and a half or fifty-six dollars per ton; at Columbus, Ohio, fifty-four (54) dollars per ton. Prices advanced during December, 1879, and January, 1880, for March delivery,
58 to about seventy ($70.00) dollars per ton. Prices remained nearly stationary during the month of February, 1880, for March delivery. I had offers in the latter part of February, 1880,

for March delivery, 1880, of iron rails at Rome, New York; at sixty-four and $\frac{50}{100}$ dollars per ton, fifty (50) pounds to the yard iron rails, and at Danville, Pennsylvania, sixty-six (66) dollars per ton, and at Pottsville, Pennsylvania, at same price, same kind of rails. At these prices at those points for delivery in March, adding the freight to Chicago or Columbus, which would be at least six (6) dollars per ton, would make the rails cost at Chicago or Columbus seventy (70.00) dollars, and fifty cents from Rome, and seventy-two (72.00) dollars from the other two points named. The price named for freight would be extremely low for the month of March; the probabilities are that the freight would be more.

Defendants counsel object to this answer, and each part thereof, as incompetent.

Sixth redirect interrogatory. Was it not a fact that at that time the principal purchasing market for iron rails for the construction of railroads was in the West, west of the Mississippi river? State if you know.

Defendants counsel object to this question as leading, as well as irrelevant and incompetent.

Answer. I could not state definitely as to that, but there was a large demand for iron rails for railroads being constructed—
59 contemplated—west of the Mississippi river.

Seventh redirect interrogatory. State, if you know, why there was a difference in the price of such iron, between these more easterly and westerly points, as you have mentioned in your answer to a former interrogatory.

Defendant's counsel objected to this question as irrelevant and incompetent.

Answer. I can only answer that in a general way; that the prices for material, for making iron rails, and labor were generally cheaper in the East than in the West.

Eighth redirect interrogatory. State, if you know, whether in purchasing such iron rails in the different markets spoken of by you, during the month of December, 1879, and January, February, and March, 1880, the time of delivery, as to its being an early spring delivery, or later, was an ingredient in or made a difference in the price at which such iron could be purchased during that time and in those months.

Defendant's counsel object to this question as leading, as well as incompetent and irrelevant.

Answer. It did not make any difference during the months of December, 1879, January, or February, 1880, as to the price of the iron rails at the mills for March, April, or May delivery; but for consumption in the West, rails would come cheaper to the purchaser, if delivered after the opening of navigation, when they could be transferred by water instead of by rail.

60 Ninth redirect interrogatory. State what that difference would be, and why.

Defendant's counsel object to this question as incompetent and irrelevant.

Answer. The difference, of course, would vary between different points, but I should say it would average about (3) three dollars per ton in favor of water shipments as against rail shipments.

Tenth redirect interrogatory. In your answer to the forty-second cross-interrogatory you stated that the thousand tons of iron rails was just about enough to complete the gap in the main line of your Iowa extension. What did you mean by the gap in the main line?

Answer. We contracted with the Springfield Iron Company for rails, as has been before stated, and felt that we could rely upon the delivery of those rails according to contract, but that was not enough to complete the main track of our Iowa extension, and the thousand tons referred to were contracted for to complete the main track, and about that only, leaving us no surplus for side-tracks and other extension or branches to the Iowa extension, which we had decided to build.

Defendant's counsel object to this question as incompetent and irrelevant.

Eleventh redirect interrogatory. State more particularly what was this gap in the main line referred to, and whether that con-
61 stituted all the main line of your Iowa extension then unfinished and to be completed.

Answer. The Iowa extension of the plaintiff company was from Albert Lee, in Minnesota, to Fort Dodge, in Iowa. In the year 1879 portions of this extension were completed from Albert Lee, Minnesota, southwesterly to Forest City, Iowa, about thirty five (35) miles, and from Fort Dodge, Iowa, northerly about twenty-nine (29) miles, leaving a gap between Forest City, Iowa, and the north end of the line from Fort Dodge, Iowa, to be completed in the spring of 1880. (As stated before, a part of the iron necessary to lay on this gap was contracted for from the Springfield Iron Company, and the plaintiff would have had sufficient iron to complete the gap, lay its necessary side-track, and its proposed branch of the Iowa extension, if the defendant company had filled its contract. I felt satisfied that the defendant company would not deliver the two thousand (2,000) tons contracted for from them, and the contract for one thousand (1,000) tons, before referred to, with the Springfield Iron Company, dated January 26th, 1880, was made so that the plaintiff might be certain of completing its main line at the earliest time in 1880).

Defendant's counsel object to so much of the foregoing answer as enclosed in brackets as incompetent, irrelevant, and irresponsive.

Twelfth redirect interrogatory. State whether, if the plaintiff had received the two thousand (2,000) tons of iron rails ordered of the defendant, and mentioned in the pleadings in this action, they
62 would have been sufficient to complete the said gap in the main line and necessary side-tracks, and said branch upon your Iowa extension, without the said one thousand (1,000) tons purchased from the Springfield Iron Company January 26th, 1880.

Defendant's counsel object to this question as incompetent and irrelevant.

Answer. They would, in connection with the iron contracted for from the Springfield Iron Company in December, 1879—the other contracts.

Thirteenth redirect interrogatory. What, if any, use could the plaintiff have made of the said two thousand (2,000) tons of iron rails ordered from defendant if he had received all of said two thousand (2,000) tons in addition to the one thousand (1,000) tons ordered from the Springfield Iron Company January 26, 1880.

Defendant's counsel object to this question as incompetent and irrelevant.

Answer. It could have used the said two thousand (2,000) tons on the branch of the Iowa extension, before referred to, and upon its Lake Superior extension, then in contemplation, from White Bear Lake Junction to Taylor Falls, Minnesota, or to relay the track of the plaintiff company from East Minneapolis to White Bear Lake Junction.

Fourteenth redirect interrogatory. In your answer to the fiftieth cross-interrogatory you stated that you received, on or about the elevnth (11) of February, 1880, a telegram from R. E. Ricker and Company, of New York, which telegram you produced. Did
63 you not, at or about the same time, receive another telegram or communication from R. E. Ricker & Company concerning the price of iron rails?

Answer. I received a telegram from R. E. Ricker and Company, dated February 10th, 1880.

Fifteenth redirect interrogatory. Will you produce this telegram?

Answer. I have the telegram in telegram-book, marked "Z" by the notary, on pages 131 and 133, and it reads as follows:

"NEW YORK, 10TH.

"C. F. HATCH: Sixty-seven dollars. New York, May and June delivery, fifty pound iron rail. If sold on receipt your decision, please reply promptly.

R. E. RICKER & CO."

(Defendant's counsel consents that the copy above set forth may stand and be used in place of the original for all purposes for which the original is competent and material, but he objects to the introduction of said telegram in evidence as incompetent and immaterial.)

Sixteenth redirect interrogatory. State whether or not the telegram last produced and read was the first response you received from said R. E. Ricker & Company in answer to your letter of Feb'y 6th, 1880, to said R. E. Ricker and Company, introduced in evidence upon your cross-examination by defendant?

Answer. It was the first response to that letter.

Seventeenth redirect interrogatory. State how the prices of sixty-seven (67) dollars per ton, and sixty-three dollars and fifty
64 cents per ton, mentioned in the two said telegrams of February 10th and 11th, 1880, in New York, would compare with the price of seventy (70.00) per ton in Columbus, Ohio.

Defendant's counsel object to this question as irrelevant and incompetent.

Answer: The price in the first telegram, sixty-seven (67) dollars, in New York, May and June delivery, would make that iron cost in Columbus, Ohio, about (72.00) seventy-two dollars per ton. The price named in the second telegram—the one of February 11th, 1880—sixty-three dollars (63.00) and fifty (50) cents per ton in New York, February, March, and April delivery, would make the iron cost in Columbus, Ohio, if forwarded by rail from New York, about seventy (70.00) dollars per ton, and if forwarded by water from New York, about two (2) dollars cheaper, but it could only be forwarded in the month of April by water, if at all.

Eighteenth redirect interrogatory. What, if anything, would have been the difference in the cost per ton to the plaintiff for such iron rails, delivered on their Iowa extension line, purchased in the month of February, 1880, at New York city, for March delivery at, say sixty-three (63.00) dollars and fifty (50) cents per ton, and the same rails purchased in the month of February, at Columbus, Ohio, for March delivery at the same price?

Defendant's counsel objects to this question as irrelevant and incompetent.

Answer. The iron rails from New York would cost about five (5) dollars per ton more than the iron rails from Columbus, Ohio.

65 Nineteenth redirect interrogatory. In your answer to the fifty-third cross-question you say that you suppose that a lot of a thousand tons of imported iron rails might have been readily purchased in the market during the months of February and the fore part of March, 1880. From your knowledge of the market prices of iron rails at said time, for delivery in March, 1880, at what rate per ton would you say such purchase could have been made?

Defendant's counsel objects to this question as incompetent and immaterial.

Answer. I should say sixty-three and $\frac{50}{100}$ (63.50) dollars per ton in New York.

Twentieth redirect interrogatory. Is New York city the principal market in this country for imported rails?

Answer. It is the principal market in this country for imported iron rails.

Twenty-first redirect interrogatory. What, if anything, was the difference in the market price in this country of imported iron rails and rails manufactured in this country?

Answer. Rails manufactured in this country were worth in the months of January and February, 1880, one (1) to two (2) dollars more than imported iron rails.

66 Twenty-second redirect interrogatory. Did the defendant ever request the plaintiff to engage or provide any cars for the receipt of said two thousand (2,000) tons of rails, or any part thereof, mentioned in the pleadings in this action, or suggest to, or notify plaintiff that it would be necessary for plaintiff to do so?

Answer. It never did.

Twenty-third redirect interrogatory. The defendant's counsel, on his cross-examination, put to you the following question: "Did the plaintiff notify the defendant of any readiness on the part of the plaintiff to receive said rails, or any part thereof, last March?" State how you understood that question.

Answer. I understood the question to mean, did the plaintiff, anytime in March last, notify the defendant of its readiness to receive said rails, and I answered the question on that understanding.

Twenty-fourth redirect interrogatory. Who are Morton, Bliss and Company, of New York city, referred to in the defendant's fifty-ninth cross-interrogatory, and in your answer to the sixtieth cross-interrogatory?

Answer. They are a firm of bankers in New York city, through whom we negotiated the sale of bonds issued on our Iowa and Lake Superior extensions.

Twenty-fifth redirect interrogatory. State whether Morton, Bliss and Company did furnish money to pay for iron rails purchased by plaintiff whenever required by plaintiff so to do under their contract?

Answer. They did.

67 Twenty-sixth redirect interrogatory. In your answer to defendant's sixty-sixth cross-interrogatory you stated that plaintiff rather expected that the defendant would not deliver the iron according to contract, why did you so expect?

Answer. I expected they would not deliver the iron according to contract, because of their neglect to reply to my letters and telegrams to them in the latter part of December, 1879, and the early part of January, 1880, and also from the report Mr. Woolsey made me on his return from Columbus in January, 1880, saying they would not admit to him the existence of a contract.

Twenty-seventh redirect interrogatory. So far as you know, did the defendant refuse or omit to deliver the said two thousand (2,000) tons of iron rails ordered by the plaintiff from defendant on the 19th day of December, 1879, for any other reason than upon the defendant's pretense or claim that there was no contract existing between plaintiff and defendant for the sale and delivery of such iron.

Defendant's counsel object to this question as incompetent and irrelevant.

Answer. So far as I know that may be the only reason, unless they failed to deliver the iron because of the great increase of the market price of iron rails above the price named in their letter of December 8th, 1879.

Defendant's counsel objects to this answer as irresponsive and incompetent and irrelevant.

68 Recross-examination:

First recross-question. To what point on the railroad were iron rails for use in the construction of said Iowa extension shipped in March and April, 1880?

Plaintiff's counsel object to this question as incompetent and immaterial.

Answer. To Albert Lee, Minnesota.

Second recross-question. At what time in the spring did navigation usually open for the transportation of iron rails to such points as they would require to be carried for use in the construction of said Iowa extension?

Plaintiff's counsel object to this question as incompetent and irrelevant.

Answer. The time varies different years. I should say that the latter part of April would be about the average time.

Third recross-question. Did the time of delivery effect the price of iron rails otherwise than that the cost of transportation differed at different seasons of the year.

Plaintiff's counsel object to this question as incompetent and irrelevant.

Answer. It did not, so far as I know, for delivery in March, April, or May, it being understood that prices named in December for delivery in those months were less than prices named in January and February for delivery in those same months.

69 Fourth recross-question. Does not the cost to the consumer of iron rails consist of the price which he pays to the seller for the iron delivered at the place where sold, and the cost of its transportation to the place where it is used?

Plaintiff's counsel object to this question as incompeient and irrelevant.

Answer. It does.

Fifth recross-question. Does the place where the purchaser proposes to use the iron effect the price which the seller demands for his iron rails, when the seller is to deliver the rails to the purchaser at the place where they were sold?

Plaintiff's counsel object to this question as incompetent and irrelevant.

Answer. Ordinarily it would not; but I could imagine cases where the location of the purchaser, or the place where he wished to use the rails, might effect the cost of the rails to him at the place of delivery.

Sixth recross-question. If the rails were contracted to be delivered to the purchaser at the place where they were sold in the month of March, would the fact that the rails were purchased in December or January, or February or March, effect the cost of their transportation to the place where they were to be used; if so, how and why?

Plaintiff's counsel object to this question as incompetent and irrelevant.

Answer. I do not think it would.

70 Seventh recross-question. Does not the price of iron rails fluctuate greatly and irregularly?

Answer. Yes, sir; I think it does.

Eighth recross-question. Do iron rails as a rule sell for a higher price at the mills or seaboard in January or February than they do in December?

Plaintiff's counsel object to this question as incompetent and irrelevant.

Answer. I don't know.

Ninth recross-question. Were you not in the latter part of February offered iron rails for delivery in March, 1880, by the mills at Rome, New York; Danville, Pennsylvania; and Pottsville, Pennsylvania; and, if so, what amounts were you offered?

Plaintiff's counsel object to this question as incompetent and irrelevant.

Answer. I had an offer in the latter part of February from a broker for three thousand (3,000) tons to be delivered at Rome, New York, in March, April and May, or any portion of that amount—seven thousand (7,000) tons at Danville, Pennsylvania, and three thousand (3,000) tons at Pottsville, Pennsylvania, same months

Tenth recross-question. What was the cost per ton in March, 1880, of the transportation by railroad of iron rails from New York city to Albert Hill, Minnesota?

Plaintiff's counsell object to this question as incompetent and irrelevant.

71 Answer. About ten (10) dollars per ton.

Eleventh recross-question. What was the cost per ton of the transportation in March, 1880, by railroad, of iron rails from Rome, New York, from Danville, Pennsylvania, and from Pottsville, Pennsylvania, respectively, to said Albert Lee?

Plaintiff's counsel object to this question as incompetent and irrelevant.

[Answer.] I cannot say definitely, but I think about the same price as from New York City, ten (10) dollars per ton.

Twelfth recross-question. What was the cost per ton in March, 1880, of the transportation by railroad of iron rails from Columbus, Ohio, to said Albert Lee.

Plaintiff's counsel object to this question as incompetent and irrelevant.

Answer. I cannot say definitely; I think about five (5) dollars per ton.

Thirteenth recross-question. Over what railroads would the iron pass in its transportation from Columbus, Ohio, to Albert Lee, Minnesota, by the most favorable route?

Plaintiff's counsel object to this question as incompetent and irrelevant.

Answer. I can't say which would be the most favorable route. It could go either by way of the Pan Handle route to Chicago, and thence to Albert Lee by Chicago, Milwaukee and St. Paul, or Chi-

cago and Northwestern, or by Chicago, Burlington and Quin-
72 cy, and the Burlington, Cedar Rapids and Northern Railroads, or from Columbus by Pan Handle to Indianapolis, thence over the Indianapolis, Bloomington and Western, to Peoria, thence by Chicago, Burlington and Quincy, and Burlington, Cedar Rapids and Northern.

Fourteenth recross-question. What was the cost per ton in March, 1880, of transportation of iron rails from Saint Louis, Missouri, to Albert Lee, Minnesota?

Plaintiff's counsel object to this question as incompetent and irrelevant.

Answer. Three (3) dollars per ton.

Fifteenth recross-question. Is not New Orleans a large market for the sale of imported iron rails, and did not you and President Washburn last winter inquire about the cost of iron rails bought at New Orleans and shipped from there?

Plaintiff's counsel object to this question as incompetent and immaterial and irrelevant.

Answer. I do not know that New Orleans can be called a great market for imported iron rails; do not know much about it. I have an indistinct recollection about a lot of iron rails at New Orleans last winter, but cannot say now as to prices.

Sixteenth recross-question. Would iron rails shipped by railroad from New York city or Rome, or Danville or Pottsville, above named, to Albert Lee, pass in ordinary course of transportation through Columbus, Ohio?

Plaintiff's counsel object to this question as incompetent and irrelevant.

Answer. No; I do not think they would.

73 Seventeenth recross-question. Did the plaintiff, in last February or March, purchase any iron rails of R. E. Ricker and Company?

Plaintiff's counsel object to this question as incompetent and irrelevant.

Answer. They did not.

Eighteenth recross-question. How long was the gap you have mentioned between Forest City and the north end of the line from Fort Dodge; that is, from the north end of the line from Fort Dodge constructed in 1879?

Plaintiff's counsel object to this question as incompetent and irrelevant.

Answer. About forty (40) miles.

Nineteenth recross-question. When was said gap completed?

Plaintiff's counsel object to this question as incompetent and irrelevant.

Answer. In June, 1880—the latter part of June.

Twentieth recross-question. How many miles of said gap were laid with rails in last June?

Plaintiff's counsel object to this question as irrelevant and incompetent.

Answer. About fifteen (15).

Twenty-first recross-question. How many tons of iron rails, fifty (50) pounds to the yard, are required to lay a mile of track?

Plaintiff's counsel object to this question as incompetent and irrelevant.

Answer. Between seventy-eight (78) and seventy-nine (79) tons.

74 Twenty-second recross-question. How long was the proposed branch to said Iowa extension, which you have mentioned?

Plaintiff's counsel object to this question as incompetent and irrelevant.

Answer. About four (4) miles.

Twenty-third recross-question. When were the rails laid on said branch?

Plaintiff's counsel object to this question as incompetent and irrelevant.

Answer. In August, 1880.

Twenty.fourth recross-question. How many miles of side track has plaintiff on said Iowa extension?

Plaintiff's counsel object to this question as incompetent and immaterial and irrelevant.

Answer. Between four (4) and five (5) miles.

Twenty-fifth recross-question. When were the rails laid on said side tracks?

Plaintiff's counsel object to this question as incompetent and irrelevant.

Answer. In 1879 and 1880. About one-half in 1880, from March to September.

Twenty-sixth recross question. How much of said side tracks were laid with rails after June, 1880?

Plaintiff's counsel object to this question as incompetent and irrelevant.

Answer. About one (1) mile.

Twenty-seventh recross-question. How much was laid in June, 1880?

75 Plaintiff's counsel object to this question as incompetent and irrelevant.

Answer. About one-half ($\frac{1}{2}$) a mile in June, and about one-half a mile in each of April and May. I do not think we laid any in March.

Twenty-eighth recross-question. Was it necessary to send any person to Columbus to notify the defendant that the plaintiff claimed a contract with them, and that if defendant refused or neglected to deliver iron rails according to contract, the plaintiff would purchase other iron rails and hold the defendant for damages? Could not such notice have been as well given by mail, and was it not, in fact, given by letter?

Plaintiff's counsel object to this question as incompetent and irrelevant.

Answer. I considered it necessary, and did not think it could be done so well by mail, and Mr. Woolsey informed me that he had notified them by letter, as well as verbally.

Twenty-ninth recross-question. Why did you consider it necessary, and why did you think it could not be done so well by mail?

Plaintiff's counsel object to this question as incompetent and irrelevant.

Answer. I wanted to know as soon as possible whether that company intended to carry out the contract for the delivery of the rails. I wanted to be certain that they had received the notice.

76 If I had sent it by mail, I should probably have remained a long time in doubt as to their intentions, or as to whether they had received the notice. It was very important for me to know whether they intended to deliver the rails, and in case they did not, to secure rails from other sources.

Thirtieth recross-question. Could you not easily have been made certain as to whether the letter was received or not by writing on the envelope that it be returned to you if not delivered in two (2), three (3), or such number of days as you might designate?

Plaintiff's counsel object to this question as incompetent and irrelevant.

Answer. I could not be certain that the letter would be safely delivered or carried.

Thirty-first recross-question. At what time on December 19th, 1879, were your two telegrams of that date, marked Exhibits "F" and "G," respectively, sent by you?

Plaintiff's counsel object to this question as incompetent and irrelevant; if sent on that day, it is immaterial on what hour of the day.

Answer. I cannot say of my own knowledge. The originals in my telegram book, marked by the notary "T," are endorsed by the operator on the telegram marked Exhibit "F," 9.15, and on the telegram marked Exhibit "G," 2.45 p. m. Exhibit "F" was written first in my telegram book. To my best recollection, Exhibit "F" was handed to the operator about 9 o'clock in the morning, and Exhibit "G" about 2.45 in the afternoon, of the 19th of December, 1879.

77 Redirect examination:

First redirect interrogatory. At what price per ton were the offers received by you in February, 1880, of iron rails to be delivered at Rome, New York, Danville, Pennsylvania, and Pottsville, Pennsylvania, referred to in your answer to the ninth (9) recross-interrogatory?

Defendant's counsel object to this question as incompetent and irrelevant.

Answer. Sixty-four and $\frac{50}{100}$ (64.50) dollars per ton at Rome, New York, and sixty-six (66.00) dollars per ton at Danville and Pottsville.

Second redirect interrogatory. In your answer to the twentieth recross-interrogatory you state that about fifteen miles of the said forty-mile gap in the main line in the Iowa extension was laid with rails in the month of June, 1880; when was the other twenty-five (25) miles laid?

Answer. About ten (10) miles in April and fifteen (15) miles in May, 1880.

Third redirect interrogatory. From your previous experience in sending communications by mail and telegraph to the defendant, and soliciting answers from them as to their intentions in the matter of this contract, had you any assurance that if you communicated with them again by mail, instead of sending Mr. Woolsey to see them, you would have received the information as to their intentions which you desired?

Plaintiff's counsel object to this question as incompetent and irrelevant.

78 Answer. I had no such assurance, and do not think I should have heard from them at all.

Fourth redirect interrogatory. In your answer to fortieth cross-interrogatory of defendant, you testified that plaintiff purchased of the Springfield Iron Company, on, or about December 8th, 1879, eleven hundred (1,100) tons of iron rails; what use did plaintiff make of said eleven hundred (1,100) tons of iron rails?

Answer. The portion of the Iowa extension that I have testified as having been built north from Fort Dodge—about fourteen (14) miles of it was laid originally with light iron rails, weighing thirty (30) and thirty-five (35) pounds to the yard—this lot of eleven hundred (1,100) tons of fifty (50) pounds to the yard, iron rails, purchased of the Springfield Iron Company about December 8th, 1879, was used by the plaintiff to replace and relay that portion of the road on which these light rails were originally laid. The work of taking up those light rails and replacing them by the fifty (50) pound rails was done in the months of January, February, and March, 1880. They were all used in place of those light rails—meaning the eleven hundred (1,100) tons of fifty (50) pound rails. This portion of the road, which was so replaced with heavier rails, was a part of the portion of the Iowa extension of which I have spoken as having been built in 1879.

Recross-examination:

First recross-question. How much of said light rails were
79 replaced by the fifty (50) pound rails in January, February, and March, 1880—about how many miles in each of said months?

Answer. I am unable to say now how much was done in each month; the most of the work was done in February.

Second recross-question. Please approximate, if you can, the amount done in each month?

Answer. I do not think I can make an approximate statement now, any more than to say that most of the work was done in February, 1880.

Re-redirect-examination:

First re-redirect-interrogatory: I see, by reference to the defendant's fortieth cross-interrogatory, that you were asked if you did not purchase the said eleven hundred (1,100) tons of iron rails of the Springfield Iron Company on or about the 8th of December, 1879, for March delivery, and that in your answers to subsequent interrogatories you have stated that these rails were laid on a portion of your Iowa extension north from Fort Dodge, replacing some light rails in the months of January, February, and March, 1880; have you, since your answers to said interrogatories, examined as to the time of purchase and use and receipt of said eleven hundred (1,100) tons of rails, and do you wish to make any further statement with relation to those matters?

Answer. I have since the answers to those interrogatories made such examination, and I wish now to say that the said eleven hunhundred (1,100) tons of iron rails were contracted from the Springfield Iron Company on or about December 8th, 1879,
80 to be delivered half in December, 1879, and one-half in January, 1880; that these rails, a little more than eight hundred (800) tons of them were used in the month of January, 1880, to replace the light rails referred to. The balance, about two hundred and eighty (280) tons, were used some time in June, 1880, on the main line of the Iowa extension heretofore referred to.

CHAS. F. HATCH.

It is hereby acknowledged that the agreements of counsel stated by the notary in these depositions were made by us. The plaintiff waves all objection on the ground that it is not proper matter of cross-examination to so much of the testimony of said C. F. Hatch as relates to the authority of W. D. Washburn to negotiate and act for the plaintiff, and the correspondence and communication between said C. F. Hatch and W. D. Washburn, reserving, however, all objections made thereto on the ground of incompetancy, irrelevancy, and immateriality.

SHAW, LEVI, AND CROY,
*Atty's for Plaintiff.*
HARRISON, OLDS, AND MARSH,
*Atty's for Defendant.*

EDWARD M. JOHNSON, *Notary.*

81 And the said T. B. WOOLSEY, being of lawful age, and having been by me first duly cautioned and sworn to tell the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said T. B. Woolsey, and he did thereupon depose and testify and say as follows:

First interrogatory. What is your name, age, place of residence, and present occupation?

Answer. T. B. Woolsey; age, thirty-one (31) years; reside in Minneapolis, Minnesota; I am the traveling freight agent for the plaintiff in this action.

Second interrogatory. How long have you been in the employ of the plaintiff in this action?

Answer. About three and one-half (3½) years.

Third interrogatory. Do you know Charles F. Hatch, the general manager of the Minneapolis and St. Louis Railway Company, and do you know defendant?

Answer. I know Charles F. Hatch, the general manager of the Minneapolis and Saint Louis Railway Company, and I know defendant; in that I know Mr. Harrison, the secretary, and Mr. Thomas, the general manager of the defendant.

Fourth interrogatory. Did you, at the direction of Mr. Charles F. Hatch, general manager of plaintiff, go to Columbus, Ohio,
82 in the month of January, A. D. 1880; if yea, what time in January?

Answer. Yes; arrived at Columbus January 19th, 1880.

Fifth interrogatory. Did you visit the office of the Columbus Rolling-Mill Company and see and have an interview with the officers or agents of that company; if yea, what officers and agents did you see, and what was the subject of the interview?

Answer. Yes; saw the secretary, Mr. Harrison, and the general manager, Thomas, and had an interview with the secretary. The subject of the interview was railroad iron. This interview was January 19th, 1880.

Sixth interrogatory. State what the interview was you had with both or either of these gentlemen, the secretary and general manager of the defendant, as nearly as you can remember to give it.

Answer. I had an interview with the secretary, and explained to him that the object of my visit was to ascertain the intentions of his company concerning a lot of two thousand (2,000) tons of iron rails which the plaintiff claimed was deliverable to it under a contract had with defendant. The substance of the secretary's reply to me was that the defendant was under no obligations to sell this lot of two thousand (2,000) tons of iron rails to plaintiff, and should only sell and deliver them, the rails, if it should be to the interest of the defendant to do so.

Seventh interrogatory. Did you have any interview with General Manager Thomas, or attempt to have any interview with him?
83 Answer. I had no interview with General Manager Thomas. I saw him and spoke with him. I attempted to interview him, but was told by Mr. Harrison that he was engaged, and probably would be for several days.

Eighth interrogatory. What, if any, reply, did you make to Secretary Harrison, and what, if anything, did you do?

Answer. I told Secretary Harrison that I was compelled to consider him the representative of the defendant in this matter, and delivered to him a notice addressed to Columbus Rolling-Mill Company, and handed him such notice.

Ninth interrogatory. Look upon the paper writing now produced and shown you, marked upon the back as "Exhibit "R," with the name of the notary, and state if you recognize that paper, and what it is.

Answer. The writing marked Exhibit "R" is the draft of the notice handed said Secretary Harrison by me.

Tenth interrogatory. In whose handwriting is the paper writing Exhibit "R"?

Answer. Mine.

Eleventh interrogatory. Do you wish to be understood that the paper writing now exhibited to you is the same paper writing you handed to Secretary Harrison, or a duplicate of the paper writing you handed to Mr. Harrison?

84 Answer. The writing "Exhibit R" is not the paper handed to Secretary Harrison, but a duplicate.

Twelfth interrogatory. State whether the said duplicate was also in your handwriting.

Answer. Yes.

Thirteenth interrogatory. Can you state whether the paper writing you handed to Secretary Harrison was a true copy and duplicate of the paper writing marked "Exhibit R?"

Answer. It was.

Fourteenth interrogatory. Did you leave the paper writing handed to Secretary Harrison in his hands?

Answer. Yes.

Fifteenth interrogatory. When you had handed said paper writing to Secretary Harrison, what further was done?

Answer. He read it and asked me to remain; went out [and] returned with general manager Thomas, to whom he presented me. General manager wrote a paper which was handed me by Secretary Harrison. I saw the notice I had handed Secretary Harrison—the duplicate of "Exhibit R"—in the hands of general manager Thomas. I had some further conversation with Secretary Harrison after he had handed me the paper written by general manager Thomas.

Sixteenth interrogatory. Look upon the paper writing now
85 produced and handed to you, and marked upon the book "Exhibit Q," and certified by the notary as a letter offered by the witness Chas. F. Hatch, and state whether you recognize that paper writing, and state what it is?

Answer. The writing "Exhibit Q," endorsed by notary and also marked "Exhibit Q," Charles F. Hatch, is the writing of general manager Thomas, which I testified to, and was received by me on January 19th, 1880, at the office of the Columbus Rolling-Mill [Company] at Columbus, Ohio, and this writing, "Exhibit Q," is in the handwriting of general manager Thomas.

Seventeenth interrogatory. You have spoken of Mr. Thomas as general manager Thomas. What do you know of his official character or capacity with relation to defendant, the Columbus Rolling-Mill Company?

Answer. Secretary Harrison informed me that Mr., or General Thomas, was general manager of defendant, and frequently used his name coupled with that title in our conversation.

Eighteenth interrogatory. Will you now please write upon the paper, "Exhibit R," the following: "Exhibit R," with your name under it. Will you now please write upon the paper, "Exhibit Q," the following: "Exhibit Q," with your name under it.

(The witness identifies the papers as requested. Edward M. Johnson, notary.)

Nineteenth interrogatory. What further conversation, if any, did you have on said 19th day of January, 1880, with secre-
86 tary Harrison or general manager Thomas, or either of them?

Answer. I had a further conversation with Secretary Harrison, in which he asked me to withdraw my notice, a copy of "Exhibit R," which I consented to do upon the condition that the defendant would make proper execution of a formal contract embodying the trms of the contract claimed by plaintiff, which Secretary Harrison for his company refused to do.

Twentieth interrogatory. Did you withdraw the notice?

Answer. I did not; the condition not having been complied with.

Twenty-first interrogatory. Was this further conversation had on the same day and in the same place?

Answer. It was had on the same day and in the same room.

Plaintiff's counsel now offers in evidence in this case, in connection with the testimony of this witness, T. B. Woolsey, the two paper writings marked, respectively, "Exhibit R" and Exhibit Q, and asks that they be certified in due form by the notary, and attached to this deposition.

Twenty-second interrogatory. If you now think of any further conversation you had with Secretary Harrison on that day, you may state it.

Answer. The conversation which I have testified to as to the re-
sult was at considerable length. Among other things, I told
87 Secretary Harrison that this two thousand (2,000) tons of iron rails was purchased of defendant by plaintiff for construction of plaintiff's road, and was necessary to be obtained by plaintiff to enable it to keep faith with third parties. I further asked Secretary Harrison for his reason or excuse for refusing to make formal execution of contract; and further asked him if he had not received the order of general manager of plaintiff for two thousand (2,000) tons of iron rails within the limit of the offer of defendant. Secretary Harrison did not deny the receipt of such notice or order within said limit.

T. B. WOOLSEY.

(This witness was not cross-examined. E. M. Johnson, notary.)

The further taking of the depositions under the within and hereto attached notice was here adjourned until Saturday, the 23rd day of October, 1880, at 9 o'clock in the forenoon, at the office of Shaw, Levi and Cray, at 245 Nicollett avenue, in the city of Minneapolis, in the county of Hennepin, and State of Minnesota.

EDWARD M. JOHNSON, *Notary.*

The further taking of depositions under the hereto-attached notice was resumed at 9 o'clock in the forenoon of October 23rd, 1880, at the office of Shaw, Levi and Cray, at number 245 Nicollett avenue, in the city of Minneapolis, the time and place to which the taking of said depositions was adjourned. Counsel for plaintiff and defendant both being present, the further taking of depositions under the within and hereto attached notice was disposed with.

88 Mr. F. G. Stringham, mentioned in the notice of the taking of these depositions which is hereto attached, was not called to testify.

EDWARD M. JOHNSON, *Notary.*

In the Circuit Court of the United States for the Southern District of Ohio, Eastern Division.

THE MINNEAPOLIS AND SAINT LOUIS RAILWAY COMPANY, Plaintiff,
*against*
THE COLUMBUS ROLLING MILL COMPANY, Defendant.

STATE OF MINNESOTA, }
*District of Minnesota, County of Hennepin,* } *ss:*

I, Edward M. Johnson, a notary public in and for the county of Hennepin, and State of Minnesota, and duly commissioned and qualified under the laws of the United States to take depositions for use in the circuit courts of the United States, do hereby certify that the reason why the said deposition was taken was that the said witnesses, in the notice of the taking of depositions, which is hereto attached, mentioned, reside at the city of Minneapolis, in the county of Hennepin, and State of Minnesota, more than one hundred (100) miles from Columbus, Ohio, the place where this cause is to be tried.

I further certify that on the twentieth day of October, A. D. 1880, I was attended at the office of Shaw, Levi and Cray, attorneys-at-law, No. 245 Nicollet avenue, in the city of Minneapolis, State of Minnesota, by Shaw, Levi and Cray, Esquires, of counsel for

89 plaintiff, and by Joseph Olds, Esquire, of counsel for defendant, and by the witnesses, Charles F. Hatch and T. B. Woolsey, who were of sound mind and lawful age, and the said witnesses were by me, either on said 20th day of October, A. D. 1880, or on one of the subsequent days to which the further taking of these depositions was regularly and duly adjourned (as will specifically appear in said deposition), carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and the depositions were by me reduced to writing in the presence of the witnesses, and from their statements made on said 20th day of October, A. D. 1880, and upon the 21st and 22nd

days of October, to which subsequent days the further taking of the depositions was, of necessity, adjourned, and after having been reduced to writing by me the witnesses duly subscribed the same in my presence. I have retained the said depositions in my possession for the purpose of sealing up and directing the same, with this certificate of the reasons aforesaid for taking said depositions, with my own hand to the court for which the same were taken.

I do further certify that counsel for both plaintiff and defendant were present during the entire examination of both the witnesses aforesaid.

I do further certify that I am not of counsel, nor attorney, for either of the parties in said depositions and caption named, or in any way interested in the event of the said cause named in said caption.

And I further certify that the fee for taking said depositions, forty-four $\frac{90}{100}$ dollars, has been paid to me by the plaintiff, and the same is just and reasonable.

90 In testimony whereof I have hereunto set my hand and official seal at the city of Minneapolis, in the county of Hennepin, and State of Minnesota, this 23rd day of October, A. D. 1880.

[SEAL.] EDWARD M. JOHNSON,
*Notary Public, Hennepin County, Minnesota.*

DEC. 5TH, 1879.

Rolling-Mill Company, Columbus, Ohio:

GENTS: Please quote me prices for 500 to 3,000 tons 50-lb. steel rails, and for 2,000 to 5,000 tons 50-lb. iron rails, March, 1880, delivery.

Truly yours,

CHAS. F. HATCH, *G. M.* H.

EXHIBIT "A." Chas. F. Hatch.

I hereby certify that the within paper writing, marked "Exhibit A," was made by me from the paper writing to be found on page four hundred and ninety-three (493) of the book produced and exhibited before me during his examination by the witness, Charles F. Hatch, and which was by me inspected and identified, and then by me marked "Exhibit W;" that I have carefully examined and compared said Exhibit A with said paper writing on page 493 of said "Exhibit W," and that the same is a true and correct copy thereof.

EDWARD M. JOHNSON,
*Notary Public.*

91 COLUMBUS, OHIO, *Dec. 8th*, 1879.

Chas. F. Hatch, Esq., Gen'l Man'ger M. & St. L. R'w'y, Minneapolis, Minn.:

D'R SIR: Your favor of 5 inst. at hand. We do not make steel rails.

For iron rail we will sell 2,000 to 5,000 tons 50-lb. rails for fifty-

four (54.00) dollars per gross ton for spot cash, Y. O. B. cars at our mill, March delivery, subject as follows:

In case of strike among our workmen, destruction of or serious damages to our works by fire or the elements, or any causes of delay beyond our control, we shall not be held accountable in damages.

If our offer is accepted shall expect to be notified of same prior to Dec. 20th, '79.

Yours truly, &c.,

W. A. HARRISON, *Sec'y.*

"EXHIBIT B."

I hereby certify that the within letter was offered by the witness, Charles F. Hatch, as a part of his testimony, and is by me marked "Exhibit B," to be attached to and become part of his deposition.

EDWARD M. JOHNSON,
*Notary Public, Hennepin County, Minnesota.*

92 "EXHIBIT C." Chas. F. Hatch.

"DEC. 16.

"W. A. Harrison, Sec'y Rolling-Mill Co., Columbus, O.:

"Please enter our order for twelve hundred (1,200) tons rails, March delivery, as per your favor of the 8th (eighth). Please reply.

"CHAS. F. HATCH,
"*Gen'l Man'ger M. and St. L. R'y.*"

I hereby certify that the within paper writing marked "Exhibit C" was made by me from the paper writing to be found on page one hundred and thirty-two (132) of the book produced and exhibited before me during this examination by the witness, Charles F. Hatch, and which was by me inspected and identified and then by me marked "Exhibit Y;" that I have carefully examined and compared said "Exhibit C" with said paper writing on page 132 of said Exhibit Y, and that the same is a true and correct copy thereof.

EDWARD M. JOHNSON,
*Notary Public.*

93 "EXHIBIT D." Chas. F. Hatch.

"DEC. 16TH, 1879.

"W. A. Harrison, Esq., Sec'y Rolling Mill Co., Columbus, O.:

"D'R SIR: Yours of the 8th came duly to hand. I telegraphed you to-day to enter our order for twelve hundred (1,200) tons 50 lb. iron rails for next March delivery, at fifty-four (54) dollars, F. O. B. cars at your mill. Please send contract. Also please send me templets of your 50 lb. rail. Do you make splices? If so, give me prices for splices for this lot of iron.

"Yours, truly,

"CHAS. F. HATCH, *G. M.*"

I hereby certify that the within paper writing marked "Exhibit D" was made by me from the paper writing to be found on page

eighty (80) of the book produced and exhibited before me during his examination by the witness, Charles F. Hatch, and which was by me inspected and identified and then by me marked "Exhibit X;" that I have carefully examined and compared said "Exhibit D" with said paper writing on page 80 of said "Exhibit X," and that the same is a true and correct copy thereof.

EDWARD M. JOHNSON,
*Notary Public,*

94 EXHIBIT E. Chas. F. Hatch.

COLUMBUS, *Dec.* 18.

C. F. Hatch:

We cannot book your order at present at that price.

COLUMBUS ROLLING MILL COMPANY.

I hereby certify that the within paper writing, marked "Exhibit E," was made by me from the paper writing to be found on page one hundred and forty-one (141) of the book produced and exhibited before me during his examination by the witness, Charles F. Hatch, and which was by me inspected and identified and then by me marked "Exhibit Y;" that I have carefully examined and compared said "Exhibit E" with said paper writing on page 141 of said "Exhibit Y," and that the same is a true and correct copy thereof.

EDWARD M. JOHNSON,
*Notary Public.*

95 EXHIBIT F. Chas. F. Hatch.

"DEC. 19TH, 1879.

"Columbus Rolling-Mill, Columbus, O.:

"Your proposition holds good until Dec. 20th (twentieth). Do you decline to carry it out?

"C. F. HATCH."

I hereby certify that the within paper writing, marked "Exhibit F," was made by me from the paper writing to be found on page one hundred and forty-two (142) of the book produced and exhibited before me during his examination by the witness, Charles F. Hatch, and which was by me inspected and identified and then by me marked "Exhibit Y;" that I have carefully examined and compared said "Exhibit F" with said paper writing on page 142 of said Exhibit Y, and that the same is a true and correct copy thereof.

EDWARD M. JOHNSON,
*Notary Public.*

96 "EXHIBIT G." Chas. F. Hatch.

"DEC. 19TH.

"Columbus Rolling-Mill Company, Columbus, O.:

"Please enter our order for two thousand tons rails as per your letter of the 6th. Please forward written contract; reply.

"C. F. HATCH."

I hereby certify that the within paper writing, marked "Exhibit G" was made by me from the paper writing to be found on page one hundred and forty-six (146) of the book produced and exhibited before me during his examination by the witness, Charles F. Hatch, and which was by me inspected and identified and then by me marked "Exhibit Y;" that I have carefully compared and examined said "Exhibit G" with said paper writing on page 146 of said "Exhibit Y," and that the same is a true and correct copy thereof.

EDWARD M. JOHNSON,
*Notary Public.*

97 "EXHIBIT H." Chas. F. Hatch.

DEC. 22.

Columbus Rolling-Mill, Columbus, Ohio:

Did you enter my order for two thousand (2,000) tons rails as per my telegram of Dec. 19th? Ans.

C. F. HATCH,
*Gen'l Mang'r M. and St. L. R'y.*

I hereby certify that the within paper writing marked "Exhibit H" was made by me from the paper writing to be found on page two (2) of the book produced and exhibited before me during his examination by the witness, Charles F. Hatch, and which was by me inspected and identified and then by me marked "Exhibit Z;" that I have carefully examined and compared said Exhibit H with said paper writing on page 2 of said "Exhibit Z," and that the same is a true and correct copy thereof.

EDWARD M. JOHNSON,
*Notary Public.*

"EXHIBIT I." Chas. F. Hatch.

98 "DEC. 26TH, '79.

"W. A. Harrison, Esq., Sec'y, &c., Columbus, Ohio.

"D'R SIR: I telegraphed you last Friday, Dec. 19th, to enter our order for 2,000 tons rails (50 lb.), @ $54, as per your favor of the 8th, & asked that you forward formal contract, but so far have failed to hear from you.

"When may I expect your reply?

"Yours, truly,

"CHAS. F. HATCH, *G. M.*"

Ruled out.

I hereby certify that the within paper writing, marked "Exhibit I," was made by me from the paper writing to be found on page one hundred and twelve (112) of the book produced and exhibited before me during his examination by the witness, Charles F. Hatch, and which was by me inspected and identified and then by me marked "Exhibit X;" that I have carefully examined and compared said "Exhibit I" with said paper writing on page 112 of said "Exhibit X," and that the same is a true and correct copy thereof.

EDWARD M. JOHNSON,
*Notary Public.*

"EXHIBIT K." Chas. F. Hatch.

99 . "W. A. Harrison, Sec'y Rolling-Mill, Columbus, Ohio:

"I am still without reply to my telegrams of Dec. 19th & 22nd Please let me hear from you.

"C. F. HATCH,
*Gen'l M'g'r M. & St. L. R'y.*

I hereby certify that the within paper writing, marked "Exhibit K," was made by me from the paper writing to be found on page fourteen (14) of the book produced and exhibited before me during his examination by the witness, Chas. F. Hatch, and which was by me inspected and identified and then by me marked "Exhibit Z;" that I have carefully examined and compared said "Exhibit K" with said paper writing on page 14 of said Exhibit Z, and that the same is a true and correct copy thereof.

EDWARD M. JOHNSON,
*Notary Public.*

"EXHIBIT L." Chas. F. Hatch.

100 DEC. 30.

"Columbus Rolling Mill, Columbus, Ohio:

"Why do I not get reply to my telegrams and letter regarding order for two thousand tons rails sent you December 19th?

"C. F. HATCH,
*"Gen'l Man'ger M. & St. L. R'y."*

I hereby certify that the within paper writing marked "Exhibit L" was made by me from the paper writing to be found on page twenty-four (24) of the book produced and exhibited before me during his examination by the witness, Charles F. Hatch, and which was by me inspected and identified and then by me marked "Exhibit Z;" that I have carefully examined and compared said "Exhibit Z" with said paper writing on page 24 of said "Exhibit Z," and that the same is a true and correct copy thereof.

EDWARD M. JOHNSON,
*Notary Public.*

EXHIBIT M. Chas. F. Hatch.

101 "COLUMBUS, O., — 30.

"Chas. F. Hatch, Minneapolis:

"Wrote you yesterday. Will write you Friday fully.

"W. A. HARRISON."

I hereby certify that the within paper writing marked "Exhibit M" was made by *by* me from the paper writing to be found on page twenty-five (25) of the book produced and exhibited before me during his examination by the witness, Charles F. Hatch, and which was by me inspected and identified and then by me marked "Exhibit Z;" that I have carefully examined and compared said "Ex-

I hereby certify that the within paper writing, marked "Exhibit G" was made by me from the paper writing to be found on page one hundred and forty-six (146) of the book produced and exhibited before me during his examination by the witness, Charles F. Hatch, and which was by me inspected and identified and then by me marked "Exhibit Y;" that I have carefully compared and examined said "Exhibit G" with said paper writing on page 146 of said "Exhibit Y," and that the same is a true and correct copy thereof.

EDWARD M. JOHNSON,
*Notary Public.*

97 "EXHIBIT H." Chas. F. Hatch.

DEC. 22.

Columbus Rolling-Mill, Columbus, Ohio:

Did you enter my order for two thousand (2,000) tons rails as per my telegram of Dec. 19th? Ans.

C. F. HATCH,
*Gen'l Mang'r M. and St. L. R'y.*

I hereby certify that the within paper writing marked "Exhibit H" was made by me from the paper writing to be found on page two (2) of the book produced and exhibited before me during his examination by the witness, Charles F. Hatch, and which was by me inspected and identified and then by me marked "Exhibit Z;" that I have carefully examined and compared said Exhibit H with said paper writing on page 2 of said "Exhibit Z," and that the same is a true and correct copy thereof.

EDWARD M. JOHNSON,
*Notary Public.*

"EXHIBIT I." Chas. F. Hatch.

98 "DEC. 26TH, '79.

"W. A. Harrison, Esq., Sec'y, &c., Columbus, Ohio.

Ruled out.

"D'R SIR: I telegraphed you last Friday, Dec. 19th, to enter our order for 2,000 tons rails (50 lb.), @ $54, as per your favor of the 8th, & asked that you forward formal contract, but so far have failed to hear from you.

"When may I expect your reply?

"Yours, truly,

"CHAS. F. HATCH, *G. M.*"

I hereby certify that the within paper writing, marked "Exhibit I," was made by me from the paper writing to be found on page one hundred and twelve (112) of the book produced and exhibited before me during his examination by the witness, Charles F. Hatch, and which was by me inspected and identified and then by me marked "Exhibit X;" that I have carefully examined and compared said "Exhibit I" with said paper writing on page 112 of said "Exhibit X," and that the same is a true and correct copy thereof.

EDWARD M. JOHNSON,
*Notary Public.*

"EXHIBIT K." Chas. F. Hatch.

99 . "W. A. Harrison, Sec'y Rolling-Mill, Columbus, Ohio:

"I am still without reply to my telegrams of Dec. 19th & 22nd Please let me hear from you.

"C. F. HATCH,
*Gen'l M'g'r M. & St. L. R'y.*

I hereby certify that the within paper writing, marked "Exhibit K," was made by me from the paper writing to be found on page fourteen (14) of the book produced and exhibited before me during his examination by the witness, Chas. F. Hatch, and which was by me inspected and identified and then by me marked "Exhibit Z;" that I have carefully examined and compared said "Exhibit K" with said paper writing on page 14 of said Exhibit Z, and that the same is a true and correct copy thereof.

EDWARD M. JOHNSON,
*Notary Public.*

"EXHIBIT L." Chas. F. Hatch.

100 DEC. 30.

"Columbus Rolling Mill, Columbus, Ohio:

"Why do I not get reply to my telegrams and letter regarding order for two thousand tons rails sent you December 19th?

"C. F. HATCH,
*"Gen'l Man'ger M. & St. L. R'y."*

I hereby certify that the within paper writing marked "Exhibit L" was made by me from the paper writing to be found on page twenty-four (24) of the book produced and exhibited before me during his examination by the witness, Charles F. Hatch, and which was by me inspected and identified and then by me marked "Exhibit Z;" that I have carefully examined and compared said "Exhibit Z" with said paper writing on page 24 of said "Exhibit Z," and that the same is a true and correct copy thereof.

EDWARD M. JOHNSON,
*Notary Public.*

EXHIBIT M. Chas. F. Hatch.

101 "COLUMBUS, O., — 30.

"Chas. F. Hatch, Minneapolis:

"Wrote you yesterday. Will write you Friday fully.

"W. A. HARRISON."

I hereby certify that the within paper writing marked "Exhibit M" was made by *by* me from the paper writing to be found on page twenty-five (25) of the book produced and exhibited before me during his examination by the witness, Charles F. Hatch, and which was by me inspected and identified and then by me marked "Exhibit Z;" that I have carefully examined and compared said "Ex-

hibit M" with said paper writing on page 25 of said "Exhibit Z," and that the same is a true and correct copy thereof.

EDWARD M. JOHNSON,
*Notary Public.*

"EXHIBIT N." Chas. F. Hatch.

102 COLUMBUS, O., *Dec. 29th*, 1879.

Chas. F. Hatch, Esq., Gen'l Man'g'r:

D'R SIR: Your several telegrams and letters duly to hand. Will reply in full to them the latter part of this week. Am too fully pressed on other matters just at present to give them attention.

Yours, truly, &c.,

W. A. HARRISON, *Sec'y.*

I, Edward M. Johnson, do hereby certify that the within letter was offered by the witness Charles F. Hatch as a part of his testimony, and is by me marked "Exhibit N," to be attached to and become a part of his deposition.

EDWARD M. JOHNSON,
*Notary Public, Hennepin County, Minnesota.*

"EXHIBIT O." Chas. F. Hatch.

103 "COLUMBUS, O.

I. A. Harrison:

I am still without that letter regarding our order for iron rails. When may I expect to hear from you?

C. F. HATCH."

I hereby certify that the within paper writing, marked "Exhibit O," was made by me from the paper writing to be found on page forty (40) of the book produced and exhibited before me during his examination by the witness Charles F. Hatch, and which was by me inspected and identified, and then by me marked "Exhibit Z;" that I have carefully examined and compared said "Exhibit O" with said paper writing on page 40 of said "Exhibit Z," and that the same is a true and correct copy thereof.

EDWARD M. JOHNSON,
*Notary Public.*

"EXHIBIT P."

104 T. A. Harrison, Columbus, Ohio:

We claim contract with you for two thonsand tons iron rails, as per your proposition.

Why do you not reply to my letters and telegrams?

C. F. HATCH.

I hereby certify that the within paper writing, marked "Exhibit P," was made by me from the paper-writing to be found on page forty-four (44) of the book produced and exhibited before me during his examination by the witness, Charles F. Hatch, and which was by me inspected and identified, and then by me marked "Ex-

hibit Z"; that I have carefully examined and compared said "Exhibit P" with said paper writing on page 44 of said "Exhibit Z," and that the same is a true and correct copy thereof.

EDWARD M. JOHNSON,
*Notary Public.*

"EXHIBIT Q." J. B. Woolsey, Chas. F. Hatch.

105 COLUMBUS, *Jan. 19th*, 1880.

The Minneapolis and St. Louis Railway Co.,
by J. B. Woolsey, ag't:

DEAR SIR: Your notice of 19th rec'd. We deny your power or authority under any papers that have passed between your company and the Columbus Rolling-Mill Company to make any purchase on our account, and write this notice in response to yours of 19th inst. as a notification of the same power and — as that of yours which you have placed in our hands.

Yours truly, COLUMBUS ROLLING MILL CO.
SAM'L THOMAS, *Treas.*

I, Edward M. Johnson, do hereby certify that the within letter was offered by the witness, Charles F. Hatch, as a part of his testimony, and is by me marked "Exhibit Q," to be attached to and become part of his deposition.

EDWARD M. JOHNSON,
*Notary Public, Hennepin County, Minnesota.*

106 EXHIBIT R. T. B. Woolsey.

To the Columbus Rolling-Mill Co.

GENTLEMEN: The Minneapolis and St. Louis R'y claim a contract with you for two thousand (2,000) gross tons 50-lb. iron rails; "job" cars at your mill; March, 1880, delivery; terms, spot cash; $5,400 per gross ton. Demand having been made for negotiation of contract and refused, you are hereby notified that the M. and St. L. R'y Co. will go into the open market and purchase such amount of rails for your ac. on the best terms obtainable, holding you responsible for all damages, actual and contingent, resulting from your refusal.

Yours truly,
THE MINNEAPOLIS AND ST. LOUIS R'Y,
By T. B. WOOLSEY, *Ag't.*

EXHIBIT R. Edward M. Johnson, Not. P.

I, Edward M. Johnson, do hereby certify that the within paper writing was offered by the witness, T. B. Woolsey, as a part of his testimony, and is by me marked "Exhibit R," to be attached to and become part of said Woolsey's deposition.

EDWARD M. JOHNSON,
*Notary Public, Hennepin County, Minnesota.*

107 STATE OF MINNESOTA, } ss:
*County of Hennepin,* }

I, Jacob A. Wolverton, clerk of the district court fourth judicial district, in and for the county of Hennepin and State of Minnesota, hereby certify that Edward M. Johnson is a notary public residing in said county of Hennepin, duly commissioned and qualified, and that his official acts are entitled to full faith and credit; that his commission bears date Oct. 16th, A. D. 1879, and will expire Oct. 16th, A. D. 1881, and that the signature of said notary at the bottom of this certificate is genuine.

Witness my hand and the seal of said district court, this 28th day of October, A. D. 1880.

(SEAL.) J. A. WOLVERTON, *Clerk.*

Signature of magistrate: EDWARD M. JOHNSON.

108 *Stipulation.*

Circuit Court of the United States, Southern District of Ohio, Eastern Division.

THE MINNEAPOLIS AND ST. LOUIS RAILWAY COMPANY, Plaintiff,
*against*
THE COLUMBUS ROLLING-MILL COMPANY, Defendant.

For all purposes in the above-entitled action, it is hereby admitted and agreed by said parties, plaintiffs and defendant thereto, that letters and telegrams were sent and received by said parties through their agents, as follows:

That on the 5th day of December, 1879, said plaintiff wrote and mailed to said defendant a letter, of which the following is a copy:

"MINNEAPOLIS & ST. LOUIS R'Y CO.,
"MINNEAPOLIS, MIN., *Dec. 5th*, 1879.

"Chas. F. Hatch, gen'l m'g'r Rolling-Mill Co., Columbus, Ohio.

"GENTS: Please quote me prices for 500 to 3,000 tons 50-lb. steel rails, and for 2,000 to 5,000 tons 50-lb. iron rails, March, 1880, delivery.

"Truly, yours,

"CHAS. F. HATCH, *G. M.*
"H."

That on the 8th day of December, 1879, said defendant wrote and mailed to said plaintiff a letter, of which the following is a copy:

109 "OFFICE COLUMBUS ROLLING-MILL COMPANY,
"MANUFACTURERS OF RAILROAD IRON,
"ROOM 8, DESHLER BLOCK, WEST BROAD ST.,
"*Columbus, O., Dec. 8th*, 1879.

"Chas. F. Hatch, Esq., gen'l man'gr M. & St. L. R'y, Minneapolis, Minn.

"D'R SIR: Your favor of 5th inst. at hand. We do not make

steel rails. For iron rails we will sell 2,000 to 5,000 tons of 50-lb. rails for fifty-four ($54.00) dollars per gross ton for spot cash, F. O. B. cars at our mill, March delivery, subject as follows: In case of strike among our workmen, destruction of, or serious damage to, our works by fire, or the *the* elements, or any causes of delay beyond our control, we shall not be held accountable in damages. If our offer is accepted shall be expected to be notified of same prior to Dec. 20th, 1879.

"Yours, truly,

"W. A. HARRISON, *Sec'y.*"

Washburn to Hatch.

"WASHINGTON, *Dec. 16th.*

"C. F. HATCH: I think you had better accept Columbus offer for ten or twelve hundred tons.

"V. D. W."

That on the 16th day of December, 1879, said plaintiff wrote and sent to said defendant a telegram, of which the following is a copy:

110 "To W. A. Harrison, sec'y Rolling-Mill Company:

"Please enter our order for twelve hundred tons rails, March delivery, as per your favor of the eighth. Please reply.

"CHAS. F. HATCH,
"*Gen'l Man'g'r M. & St. L. R'y.*"

That on the 16th day of December, 1879, said plaintiff wrote and mailed to said defendant a letter, of which the following is a copy:

"MINNEAPOLIS AND ST. LOUIS RAILWAY,
"Chas. F. Hatch, Gen'l Man'g'r.

"MINNEAPOLIS, MINN., *Dec. 16th*, 1879.

"W. A. Harrison, Esq, sec'y Rolling-Mill Co., Columbus O.:

"D'R SIR: Yours of the 8th came duly to hand. I telegraphed you to-day to enter our order for twelve hundred (1,200) tons 50-lb. iron rails for, next March delivery, at fifty-four dollars ($54.00) F. O. B. cars at your mill. Please send contract; also please send me templet of your 50-lb. rail. Do you make splices? If so, give me prices for splices for this lot of iron.

"Yours truly,

"CHAS. F. HATCH, *G. M.*"

That on the 18th day of December, 1879, said plaintiff received from said defendant a telegram, of which the following is a copy:

"To C. F. Hatch.

"We cannot book your order at present at that price.

"COLUMBUS ROLLING-MILL CO."

111 That on the 19th day of December, 1879, said plaintiff wrote and sent to said defendant a telegram, of which the following is a copy:

"To Col's Rolling-M. Co.:

"Your proposition holds good until December twentieth. Do you decline to carry it out?

"C. F. HATCH."

That on the 19th day of December, 1879, said plaintiff wrote and sent to said defendant a telegram, of which the following is a copy:

"To Col's Rolling-Mill Co.:

"Please enter our order for two thousand tons rails, as per your letter of the sixth. Please forward written contract. Reply.

"C. F. HATCH."

That on the 22nd day of December, 1879, said plaintiff wrote and sent to said defendant a telegram, of which the following is a copy:

"To Columbus Rolling-Mill Co.:

"Did you enter my order for two thousand tons rails, as per my telegram of December nineteenth? Answer.

"C. F. HATCH,
"*Gen. Manager M. & St. L. R'y.*"

That on the 26th day of December, 1879, said plaintiff wrote and sent to said defendant a telegram, of which the following is a copy:

"To W. A. Harrison, sec'y Rolling-Mill Co.:

"I am still without reply to my telegrams of Dec'r nineteenth and twenty-second. Please let me hear from you.

"C. F. HATCH,
"*Gen. M'g'r M. & St. L. R'y.*

112 That on the 29th day of December, 1879, said defendant wrote and mailed to said plaintiff a letter, of which the following is a copy:

"Office Columbus Rolling-Mill Co., manufacturers of railroad iron, room 8, Deshler's Block, West Broad st.

"COLUMBUS, O., *Dec.* 29, 1879.

"Chas. F. Hatch, Esq., Gen'l Mang'r.

"D'R SIR: Your several letters and telegrams ready to hand Will reply in full to them the latter part of this week. Am too fully pressed on other matters just at present to give them attention.

"Yours, truly,

"W. A. HARRISON, *Sec'y.*"

That on the 30th day of December, 1879, said plaintiff wrote and sent to said defendant a telegram, of which the following is a copy:

"To Col's Rolling-Mill Co.:

"Why do I not get reply to my telegram & letter regarding order for two thousand tons rails, sent you Dec. ninth?

"C. F. HATCH,
"*Gen. Mang'r M. & St. L. R. R.*"

That on the 10th day of January, 1880, said plaintiff wrote and sent to said defendant a telegram, of which the following is a copy:

"To T. A. Harrison:

"I am still without that letter regarding our order for iron rails. When may I expect to hear from you?

"C. F. HATCH."

113 *Stipulation of Counsel.*

It is further admitted and agreed that all of the above-mentioned letters were received by the party to whom addressed in the due course of mail, and that all of said telegrams were received by the party to whom addressed in the due course of telegraphic transmission.

The production of the originals of said letters and telegrams, or either of them, in evidence on the trial of said cause, is hereby waived; and it is stipulated that this agreement may be used by either party as sufficient evidence in said cause of the sending and receipt of said letters and telegrams, and of their contents, without other or further proof.

This agreement is not to be considered as an agreed statement of facts further than is above expressed, nor as precluding either party from offering further evidence in said cause. It is further agreed that this stipulation and agreement shall be filed, and remain with the papers in said action.

Oct. 22nd, 1880.

MINNEAPL'S & ST. LOUIS R'Y CO.,
By SHAW, LEVI, AND GRAY, *Att'ys.*
COLUMBUS ROLLING MILL CO.,
By HARRISON, OLDS & MARSH, *Att'ys.*

114 In the Circuit Court of the United States for the Southern District of Ohio. Eastern Division.

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY
*vs.*
THE COLUMBUS ROLLING-MILL COMPANY.

UNITED STATES OF AMERICA:

SOUTHERN DISTRICT OF NEW YORK, } ss:
*State, City, and County of New York,* }

Be it remembered, that on this twenty-second day of November, 1880, I, Harold Smith, a notary public, in and for the county and city of New York, in the southern district and State of New York, did call and cause to be and appear personally before me, at the office of Clark, Post and Martin, at No. 34 Pine st., New York city, in said State, county, and district, Mr. H. A. V. Post, to testify, and the truth to say, on the part and behalf of the plaintiff, in a certain suit or matter of controversy now depending and undetermined in the circuit court of the United States for the southern district of Ohio, eastern division, at the city of Columbus, in said district,

wherein the Minneapolis and St. Louis Railway Company is plaintiff and the Columbus Rolling-Mill Company is defendant; and the said H. A. V. Post, being about the age of forty-eight years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, and being carefully examined by S. F. Marsh, Esq.,
115 counsel for the defendant, and H. L. Burnett, Esq., counsel for the plaintiff, he did thereupon depose, testify, and say as follows, viz:

H. A. V. POST, witness called on part of plaintiff, being duly sworn, deposes and says:

Direct examination by Mr. BURNETT:

1. Please state your name, age, residence, and occupation.

A. My name is H. A. V. Post; my age is forty-eight years; my residence is New York city, and my occupation iron and steal rail merchant, being a member of the firm of Clark, Post, and Martin.

2. In what business were you engaged from December, 1879, to March, 1880, inclusive?

A. Importing and dealing in rails; that is, in new rails and old rails; pig-iron, &c.

3. In connection with same firm of which you are now a member?

A. Yes, sir.

4. Have you such familiarity with the trade in iron rails in the city of New York as to be able to state what the market price was for 50-lb. iron rails in the city of New York during the month of March, 1880?

A. Yes, sir.

5. Please state what the market price was for 50-lb. iron rails in New York during the month of March, 1880.

Objected to.

A. They ranged from $62.00 about the first of March to about $58½ the last of March.

6. Have you any memoranda that you can turn to, or data by which you can fix the range of prices?

116 A. We have memoranda of our sales made at various times, and it is by referring to that book that I give you the figures that I have.

7. Is it or is it not a fact that in the fore part of the month of March sales of iron rails 50 pounds reached as high a price as $64.50?

Objected to.

A. I do not remember of any business being done at a higher price than $62 in March.

8. Will you be kind enough to look at the memoranda to which you refer, and see what the highest figures were that were reached in sales during that month.

A. We have a memorandum of March 22nd, a sale of 275 tons 50 pounds iron rails at $60.

9. Now, turn to the first of the month, if you please, and see what the sales averaged.

A. We have here on March 5th sale of 315 tons of old double-headed iron rails; that is, they were turned into new iron rails at $62.

10. What is your independent recollection, if you have any, as to prices outside of reference to special memoranda?

Objected to as incompetent.

A. The custom here to determine the price of new rails is to take the cost of old rails and add $20 a ton for rerolling into new. Our negotiations for fixing prices for new rails are done on that basis, and the price of the old rails during the month of March was such that our prices for new rails and business was done from $58.50 to $62.

11. Outside of that fixing of it by reference to prices of old rails, what do you state from your recollection that the market price of new rails was?

Objected to.

117 A. The market price was about $62.

12. Do you know what the freight rates per ton of railroad iron, 50 pounds, from here to Columbus were during the month of March, 1880?

Objected to.

A. I do.

13. What were they?

Objected to.

A. I think they were 24 c'ts. It was not under 24 cents per 100 pounds.

Cross-examined by Mr. T. MARSH:

14. Was that the transportation by rail or by water?

A. By rail.

15. What was the rate by water?

A. We could not transport by water in March; the canal was not open—frozen up. When navigation is open we usually paid $2.25 and $2.50 to Toledo per gross ton.

16. Is the market price of iron rails in the Western markets at Columbus, Springfield, St. Louis, Chicago, Indianapolis, and elsewhere controlled by *by* the price in New York with freight added?

Objected to.

A. I should think not; no, it is not.

Redirect:

17. Do you know or do you not know whether any shipments were being made to Western points from New York in the month of March, 1880, by water or whether the usual mode was by rail?

A. On 2d of March we were shipping steel blooms West by rail;

we were shipping them to St. Albans, Vermont, by water at
118 the same time. We were shipping old rails to Rome, New York, which is on the line of the Erie canal, by New York Central R. R. Four more shipments to Rome, New York, by rail; by Pennsylvania R. R. to Pittsburg, old rails, by rail in March; March 19th to Springfield, Illinois, by rail; March 19th, by Pennsylvania R. R., 146 tons to Columbus, Ohio.

18. To whom was that shipment made?

A. I think it was to the Columbus Rolling Mill, the defendant herein.

19. That were old rails or new rails?

A. Old T rails. March 19th, 348 tons old rails to Columbus, Ohio, by rail; March 20th, steel blooms to Lake Champlain by water; March 24, by Erie and Pacific Dispatch, by rail, to Brown, Bonnell & Co., Youngstown, Ohio.

20. Do you know whether there is any way by shipping clear through by water to Columbus, Ohio?

A. I don't know of any way to ship by water through to Columbus, Ohio.

Recross;

21. May not rails be shipped from here to Columbus partly by rail and partly by water?

A. Yes, sir.

22. When so shipped, is not the price lower than by shipping all the way by rail?

A. It generally is. I can explain that by saying that to Toledo it is $2.25 or $2.50, and from there to Columbus $1.00.

Recross-examination is objected to.

23. Was not the mode of shipment of the lot of rails which you have testified to as having been shipped by you in March by
119 rail governed more by the urgent necessity of the case than by the price of freight?

Objected to.

A. I do not know what governed it. We merely follow instructions. I merely give you the facts as we shipped. I don't know what the urgency was, though it is generally the case that people won't take rails by rail if they can get them by water. For usually the price is so much lower by water.

24. Were not the cities of Baltimore and Philadelphia extensive markets for imported rails during the winter of 1879 and 1880?

Objected to.

A. Yes, sir.

25. Do you know what the freight from those cities, or either of them, was in March last for iron rails per ton?

A. Two cents a hundred less in Philadelphia and three cents a hundred less in Baltimore than in New York.

Redirect:

26. New York is the largest market, is it not, in the country for rails?

A. Yes, sir.

27. Do not the prices in New York substantially govern and control the prices at other seaport towns—I mean of iron rails?

A. Taking the question of freight into consideration they generally do.

It is hereby stipulated and agreed by and between counsel of the respective parties that the further taking of depositions on the part of plaintiff be continued on Wednesday, November 24th, 1880, at 10 o'clock a. m.

New York, Nov. 23, '80.

Subscribed and sworn to before me this 23rd of November, 1880.

HAROLD SMITH, [SEAL.]
*Notary Public, N. Y. Co.*

120 & 121 Circuit Court of the United States for the Southern District of Ohio, Eastern Division.

MINNEAPOLIS AND ST. LOUIS RAILWAY COMPANY, Plaintiff,
*versus*
COLUMBUS ROLLING-MILL COMPANY, Defendant.

It is hereby stipulated and agreed by and between the parties to the above-entitled action that the testimony of the witnesses examined in New York city be taken down and written out by the stenographer.

H. L. BURNETT, *Counsel for Plaintiff.*
HARRISON, OLDS AND MARSH,
*Counsel for Defendant.*

UNITED STATES OF AMERICA, }
*Southern District of New York,* } *ss:*

I, Harold Smith, a notary public in and for the above-named district, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the testimony is material and necessary for the plaintiff in the cause in the caption of the said deposition named; and that the witness lives, and did live at the time of taking said deposition, in the city, county, and State of New York, the same being at a greater distance than one hundred miles from the city of Columbus, where the court at which it is expected the said
122 cause will be tried was appointed by law to be held, to wit, more than four hundred miles therefrom.

I further certify that on the twenty-second day of November, 1880, pursuant to the notice hereto annexed and the stipulation endorsed thereon, I was attended at the office of Clark, Post and Martin aforesaid by H. L. Burnett, Esq., counsel for the plaintiff, and S. F. Marsh, Esq., counsel for the defendant, and the witness, H. A. V. Post, who was of sound mind and lawful age, and the witness was carefully examined by the respective counsel, and by me cautioned and sworn

to testify the truth, the whole truth, and nothing but the truth, and the deposition was then and there taken down in short-hand by a stenographer pursuant to the stipulation hereto annexed; and after it had been reduced to writing by the said stenographer the witness carefully read and subscribed the same in my presence.

I have retained the said deposition in my possession for the purpose of sealing up and directing the same, together with the stipulation annexed thereto, and also this certificate of the reasons aforesaid for taking this deposition with my own hand to the clerk of the court for which the same was taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in said deposition and caption named, or in any (way) interested in the event of the said cause named in the caption.

In testimony whereof I have hereto set my seal and hand, this first day of December, 1880.

[SEAL.] HAROLD SMITH,
*Notary Public, N. Y. Co.*

123 ORLAND SMITH, called by plaintiff, being sworn, testified as follows:

Examined by Mr. OLOS:

Q. Col. Smith, will you state to the court and jury your residence, and what your occupation is?

A. I reside in Columbus; am at present general manager of the Columbus and Hocking Valley and Columbus and Toledo railways.

Q. How long have you lived in Columbus?

A. About six years.

Q. How long have you been engaged in you- present occupation?

A. My occupation has been that of a railroad superintendant and contractor and manager since 1850; I am what we term a railroad man. Since 1877 I have been connected with the Hocking Valley and Columbus and Toledo railways as the general superintendant and manager.

Q. Were you residing here in the winter of 1879 and 1880 and the spring and summer of 1880?

A. I was.

Q. In your general employment as a railroad manager and superintendant, and also engaged in the construction of railroads, have you had any connection with the purchase of railroad iron and the market for railroad iron at Columbus?

A. I have.

Q. Are you acquainted with the defendant, The Columbus Rolling-Mill Company?

A. I was acquainted with the management of that rolling-mill—those who were in charge.

Q. State who have been in charge?

124 A. General Thomas and Mr. Harrison are the gentlemen that I have had intercourse with in connection with the business of that mill.

Q. During what period have they had charge of it—I mean in your connection with them?

A. Ever since 1875—I think I came here in 1875—in connection with the construction of the Columbus and Toledo railway, and those gentlemen were then in charge of the mill, and have been chiefly so ever since. I believe that General Thomas' connection has ceased with the mill, but up to 1880 he was actively connected with the mill.

Q. Do you know of any other company, or companies, in Columbus besides the Columbus Rolling-Mill Company who are engaged in the manufacture and sale of railroad iron?

A. I don't know of any other. I believe Mr. Hayden makes some very light rails sometimes—some street-railroad rails—but I don't think he makes any rails for railroads.

Q. The rails manufactured by Mr. Hayden are for street railways?

Answer. Generally for the light tracks in mines, I think.

Q. So far as you know, is he engaged in the manufacture of iron rails of the size of 50 pounds to the yard?

A. I should say not; I never heard of it.

Q. What means have you of knowing, and state whether you do know, the market value of iron rails, say of 50 pounds to the yard, in the months of January, February, and March, 1880, at Columbus?

Mr. HARRISON: We insist that he should be confined to the month of March.

The COURT: First direct his attention to March.

125 Q. I will ask you if you had you had the means of knowing and do you know the market value of iron rails of 50 pounds to the yard in Columbus during the month of March, 1880?

A. Well, as a railroad superintendant and also railroad contractor, of course I have endeavored to keep posted with regard to the price of rails from time to time, not only in Columbus, but all over the country. I don't know that I have any specific knowledge of the market price obtaining in Columbus during the month of March, for I was not connected with any particular transaction for the month of March in the way of the purchase of rails in Columbus. There were no quotations for Columbus specifically that I know of. I had occasion to purchase iron rails, both previous to March and subsequent to March, but I don't know that I purchased a rail in March, and I don't know of any way of arriving at the Columbus market price, except by way of actual transactions in Columbus.

Q. Were there any companies or persons except the Rolling-Mill Company at Columbus in March, 1880, manufacturing or selling iron rails of this description?

A. No persons that I know of; never had any knowledge of any others than the Columbus Rolling-Mill Company.

Q. What do you know, Col. Smith, if anything, about this company, the defendant, selling railroad iron of the quality described in the month of March?

A. I have no knowledge of any. I think they were deliver-
126 ing some iron that I had knowledge of in the month of March, but it was, perhaps, under a previous arrangement.

Q. Do you know whether they were manufacturing rails in March?

A. My impression is that they were, but I couldn't say that I had any positive knowledge of that.

Q. State, if you know, what the market value in March, 1880, of iron rails of 50 pounds to the yard, delivered on board of cars here at Columbus Rolling-Mill, would be?

A. I have no knowledge what that would be. I know about what was the generally understood market price the country over for rails at that time, but what the rails delivered by the Columbus Rolling-Mill Co. would be I don't know.

Q. State what the market price in the month of March, 1880, was, including Columbus in your estimate, if you can state it in that way?

A. Well, the generally understood price among railroad men, what was understood to be about the ruling price for iron rails in the month of March, was from $65 to $70 per ton. That was what was the common talk among people as about the ruling price for iron rails at that time.

Q. From your knowledge of the course of trade in that regard, state whether or not 2,000 tons of iron rails of the quality described could be obtained in Columbus during the month of March, 1880, and without a previous contract for their delivery at that time? I mean a contract made at some prior date, one, two, or three months in advance.

A. You mean whether 2,000 tons could have been bought for delivery?

127 Q. Yes; whether it could have been bought for delivery in March any time during the month of March?

A. Well, from my knowledge of the Columbus Rolling-Mill and its capacity, I should say that I would have supposed that I could have bought two thousand tons of rails from that company in the month of March.

Q. Leaving that company out of consideration, could you have purchased it otherwise at Columbus?

A. I think not.

Q. Have you such knowledge of the business and orders of that company as to be able to say that if you had made a demand upon them for 2,000 tons, to be delivered on the cars at Columbus, you could have obtained it without a previous arrangement with them?

A. Had I been under urgent necessity to get immediate delivery of the rails, I should have been under some anxiety about getting them if I had made the first call and wanted to get them immediately. My experience, however, with the Columbus Rolling-Mill has always been that for the delivery of a few hundred tons of rails I almost always have been able to get them within a few days after they were ordered.

Q. My question was in regard to the delivery of a quantity equal to 2,000 tons.

A. I should not expect to get 2,000 tons of rails within a few days from my first negotiation.

Q. From your knowledge of the market and the course of trade in that regard, how long, in your judgment, ought 2,000 tons
128 of rails of that description to be ordered in the Columbus market before the time of delivery, leaving out of view the Columbus Rolling-Mill Company?

A. That means to purchase in Columbus?

Q. Yes, sir.

A. Get them delivered in Columbus without getting them from the Columbus Rolling-Mill Company—to purchase anywhere we see fit?

Q. Yes; for delivery in Columbus.

A. It is pretty difficult for me to answer that question, from the fact that I have had no experience in purchasing iron rails elsewhere. We have had no difficulty in purchasing steel rails and getting a delivery within 20 or 30 days from the time they were ordered; but we have not purchased an iron rail outside of Columbus and we, of course, did not investigate the market for iron rails or the pressure on the various mills outside of Columbus, and I am not prepared to say what we could have done in that regard. I had no occasion to investigate it.

Q. Laying out of view any actual transaction of your own, can you give an answer from your general knowledge of the markets?

A. I wouldn't have expected to get 2,000 tons of iron rails delivered here from the outside—in *in* any way outside of the Columbus Rolling-Mill Company—in less than 30 to 60 days from the time I gave the order.

End of direct ex.

129 Cross-examination by Mr. HARRISON:

Q. Colonel, do you know what number of tons of iron rails the Columbus Rolling-Mill Co. can get out per day?

A. No, sir; I don't know their exact capacity, but I understood that they could roll from forty to fifty tons a day readily. I am not well posted in regard to that, because when they have delivered us iron they generally roll us up a certain quantity. I never investigated to know certainly in regard to that.

Q. You have bought all the iron you have had occasion to buy for the roads you have been managing from the Columbus Rolling-Mill Company?

A. Always; all the iron rails.

Q. In making your purchase have you given orders for immediate delivery, or delivery in a few days, or delivery for several months in the future—what have you done in that regard?

Answer. Well, we have done both ways. Sometimes we have had an arrangement by which we were to take rails along during the season as we wanted them; we had some such arrangement as that. When I say we I mean, now, parties who were building the Ohio and West Virginia Railroad in 1879. We had an arrangement by which

we got rails as we needed them, and ordered them right along from time to time, running through any time up as long as we wanted them. Sometimes for the Hocking Valley road or the Columbus and Toledo road we would just go and negotiate for a bunch of rails as we wanted them—more commonly that way with reference
130 to the rails that we needed for replenishing and relaying on the two roads in active operation.

Q. How shortly was the delivery after the order was given?

A. Oh, generally within a few days.

Q. What is the fact in regard to the price of iron rails being less or greater in the city of Columbus, usually, than in New York?

A. Well, I should say that the relative prices fluctuate. Sometimes I have known the price of rails to be higher in New York than they were in Columbus, and sometimes higher in Columbus than they were in New York. I should not be able to state what is the usual range of that, because I have known it to fluctuate both ways.

Q. The price of iron rails in New York don't necessarily control the price of iron rails in the city of Col's?

A. I should say not.

Q. Do you recollect whether the price of iron rails greatly depreciated during the month of March, and what was the amount of falling in the market price during that month?

A. Well, I should say that I don't know that there was any manifest depreciation in the price. There was what we would say a greater reluctance on *on* the part of purchasers to buy. Purchasers were not disposed to make orders towards the latter part of the month of March. There was, in other words, an evidence of weakening in the prices.

Q. You have spoken of the general price of iron throughout the country in March. Is it not a fact that frequently the quotations of the prices of iron rails in the market is, in point of fact, ficti-
131 tious; that is, there were no sales being made at such prices; it is merely held up to them, and nobody is willing to b-y iron?

A. That was especially the case about the period to which you refer.

Q. Isn't there a large rolling-mill in Cleveland—one or more?

A. I think there are two.

Q. Do you know their capacity? Are they not very large mills?

A. What we term the Cleveland rolling-mill is a very large mill. My impression is that both mills are now, however, owned by the same company. Their specialty is steel rails, more generally. Yes, they have very large capacity.

Q. What would ordinarily be the cost of transporting, say, 2,000 tons of iron rails from the city of Cleveland to the city of Columbus? Do you know the rates of freight?

A. I know what we pay; I don't know that it would be exactly fair to say that everybody could get them transported at the same rate that we do.

Q, What is your price?

A. It would cost from a dollar to a dollar and twenty-five cents a ton; I would venture to say that any person could get them brought for $1.25.

Q. What does it ordinarily cost for a thousand tons to transport iron rails from the city of Toledo to the city of Culumbus? Suppose a party wants to ship two thousand tons, what would it cost him to ship them from Toledo to Columbus?

A. About a dollar a ton.

132 Q. You don't know of any sales having been made in the month of March, 1880?

A. I had no knowledge of any specific sales in the month of March; no personal knowledge of any.

Q. Did the Columbus Rolling-Mill Company deliver any iron rails to you about the last of March or the first of April?

A. They delivered us some rails in April.

Q. What time in April, as nearly as you can recollect?

Ans. Between the middle and the last of the month some time.

Q. Do you recollect when they were purchased?

A. No, sir; I couldn't say exactly when they were purchased; I presume they were ordered some time in the early part of the month.

Q. About the first of the month?

A. Some time in the fore part of the month, I should say. Our custom with regard to the iron rails was to order about the time we would want to use them, to give a chance for us to get the cars fairly loading rails, and have them loaded up and delivered in time, as we should want them; I suppose those rails were ordered probably in the early part of the month.

Q. What quantity was ordered at that time?

A. Not quite 200 tons at that time; between one and two hundred tons.

Q. What price was paid for them?

Objected to; objection overruled.

A. We paid $52.50 a ton for those rails.

Q. Was that the market value at that time in Columbus?

A. We had no special arrangement by which we got them for any less than the market.

133 Q. It was a purchase made in the ordinary course of trade?

A. Yes, sir.

Q. What is the fact in regard to the quantity of iron rails affecting the price of a given lot that is purchased; that is to say, suppose a party buys 200 tons, can he, according to the way in which sales are generally made by persons dealing in the article, purchase 200 tons at less or more, or at the same price as two thousand tons; does the quantity affect the price of a given order?

A. I don't know that it does materially. Of course, if I were going to a mill to purchase iron rails I should offer the larger quantity as an inducement for getting a lower price, and expect if I could give them a large order that I would get it at a little lower figure than I would on a small quantity.

Q. You have stated that everybody desiring to buy iron rails was reluctant to purchase during the month of March; that there was a reluctance upon the part of persons desiring to buy iron rails to make purchases during the month of March?

A. At the prices at which they were quoted.

Q. Did the quotations change during the month of March?

A. From my recollection I should say there was very little change in the quotations in the month of March. I refer to quotations where I have been accustomed to study quotations—in the Railway Journal.

Q. Is it not a fact that those quotations are nearly at nominal or fictitious prices, and not based upon actual transactions during the month?

134 A. Well, I would not say that there were not transactions. I presume there were transactions, but I would say from my knowledge of the trade and the whole business generally, during what we term the "boom," that it was speculative rather than for actual consumption.

Q. Were there not large importations of iron rails from Europe during the month of December, 1879, and January, February, and March, 1880, to the United States?

A. I should say there were.

Q. Have you any idea as to the quantity that was imported during those months?

A. Well, I would not be able to give figures now. I frequently studied the tables and compared, but I would not be able to give the figures now; my recollection is not distinct enough.

Q. State whether the importations were extraordinarily large or not?

A. Exceptionally, so far as the amount is concerned. I should say there was an extraordinary activity, both in old and new rails.

Q. Both in old and new rails during that time?

A. Yes, sir.

Q. When did those extraordinary importations commence; do you recollect the month?

A. Well, I should say that arrivals, I should think, began to be numerous about February.

Q. About the first of February?

A. Along in February, I should think, according to my recollections.

Q. Do you recollect how long that continued?

A. No, sir; I wouldn't be able to state about how long that
135 continued. I think that, according to my recollection of the transactions of those dates, *that* a great deal got here from from time to time, when perhaps they would have preferred it to have been back again, and the activity was kept up for a little period.

Q. Where were the shipments principally made to?

A. Principally to New York.

Q. Were there not large shipments also to the city of Baltimore?

A. I am not able to state.

Q. At any time during the month of March, could'nt very large quantities of iron have been purchased in the city of New York?

A. I should say they could.

Q. For immediate delivery?

A. I should think there might have been for immediate delivery. Of course it is difficult for me to fix dates exactly, accurately in my mind, but I have been accustomed to receive circulars from dealers in New York, and I remember that they came along pretty thick and fast about that time.

Q. How long would it take to ship 2,000 tons of iron rails from the city of Columbus to New York?

A. In the ordinary course of business it would take about three weeks—two to three weeks.

Q. Suppose that a shipper would order a shipment to be made as speedily as possible; could that time be reduced?

A. Yes; I suppose a shipment could be brought through in ten days.

Q. How long would it take in the actual transportation in the ordinary mode of transporting two thousand tons of iron rails from New York city to Columbus?

A. How long they would be on the road?

Q. Yes.

136 A. Well, they might go through in five days. I think that would be an exception to what has ever been done, though, at such rate. Of course property like that does not move with the same rapidity that what we term fast freight does, like the Union Line or White Line freight, or anything of that kind which receives special dispatch.

Redirect examination.

Q. In your examination-in-chief you stated in substance, if I remember, that where you wanted a bunch of rails that you could usually obtain them in a few days from the Columbus Rolling-Mill Company. Will you please explain what you meant by a bunch of rails, referring to the quantity; how large or small quantity do you mean?

A. From a hundred to two hundred or three hundred tons.

Q. According to your knowledge of their business capacity, could you have usually filled an order for two thousand tons as readily as these you speak of?

A. I should not expect to get them as readily.

Q. You would not?

A. No, sir; I may remark here that we have never had occasion to order a quantity of rails for immediate use in any ordinary process of operations. We would not use two thousand tons in a month in any of our ordinary operations. Even in building we seldom buy more than twelve or fifteen hundred tons in a month; therefore we have never had occasion to call for two thousand to be delivered all in one month. As I say, I would not expect to get them in an immediate call.

137 Q. How much longer time would be required, in your judgment, to have an order of two thousand tons filled than these bunches which you speak of?

A. Well, ordinarily, in any operations in which we have been engaged, if we saw we would need two thousand tons of rails, we would expect to engage them two or three months beforehand ordinarily.

Q. In speaking in your examination of the prices in New York for railroad iron I understood you to say in your cross-examination that the prices in New York did not necessarily control or regulate the prices in Columbus. Was there any great discrepancy in prices between New York and Columbus at different times beyond the mere cost of transportation?

A. At any time that we were desiring to buy rails we could buy them in Columbus at considerably less than it would cost to buy them in New York and bring them to Columbus.

Q. Whom did you buy them of here?

A. We bought them of the Columbus rolling-mill. We were buying steel rails in Cleveland, but not iron rails.

Q. State whether there was much difference, and how much, between the cost here and the cost at New York, if you had not added to the cost at New York the cost of transportation to bring them here; in other words, how did the markets compare between New York and Columbus, leaving out any influence which the cost of transportation had upon the rails when delivered here?

A. Whenever I had occasion to make inquiry I could buy rails for less here than they were quoted in New York. I think I could in Cleveland, too.

138 Q. I understood you to say that you had bought your rails for the construction of these roads from the Columbus Rolling Mill Co.?

A. All the iron rails. We don't use much iron rail here; use iron rail chiefly for sidings.

Q. In referring to that matter, let me ask you whether, in having your rails furnished to you by the Columbus rolling-mill, you had a general contract with them by which they were to supply your orders as you needed them along from month to month, or did you usually order at whatever the market price might be for the day when you made your order?

A. I think we had no standing contract with them; we stood upon the market ordinarily; that is what we could buy them at the time we wanted to buy.

Q. State if the fact that you understood between you that you received all your rails from that mill would not affect the price somewhat that the mill would charge you from what they would charge a stranger or for a single order?

A. Well, I am not prepared to answer in regard to that. That is a matter that would lie more with them than with us. Whether or not they considered us regular customers, and would treat us differently from what they would transient customers, I am not prepared to say. It is possible they might have considered that.

Q. In stating, as I understood you to in cross-examination, that there were not many sales in the month of March, owing to the range of prices, let me ask you this question: If a party
139 found it necessary to make a purchase at such time, say in March, 1880, would he or would he not have been required to pay by the quotations for that month, even if they were quite speculative?

A. I suppose he would if he had gone into the general market to get rails.

Q. If I understand you, then, the quotations are actual prices when a party was compelled to buy?

A. Well, I know nothing to the contrary.

Q. I understood you to say in your cross-examination that some time in April, 1880, there was a small quant'y—say from one hundred to two hundred tons of railroad iron delivered to you by the Columbus mill, at $52.50 a ton?

A. Yes, sir.

Q. What were the circumstances under which that was done, if you remember them?

A. I don't know that there were any special circumstances in regard to that. My recollection is not distinct with regard to the bargaining for the rails. I simply know that the order was given for the rails some time early in April; I know that they were delivered some time between the 15th and last of the month; I think there were two different deliveries, perhaps; but I know that was the price. I don't think that I made a bargain myself for the rails; I think, probably, Mr. Green made the bargain; I know that is the price.

Q. You don't know the circumstances under which the bargain was made?

A. No, sir; I don't.

140 Q. Do you know whether or not the order was made on account of the necessities of the road, or whether the order was solicited on the part of the rolling-mill, with the price at which they would fill it?

A. I have no doubt the order was made to fill the requirement of the road. I never had any knowledge of the rolling-mill soliciting the business; it has never been that way with us; we have always made our orders according to our requirements.

Q. Let me ask you: aside from that single order and the filling of it at that price, if you can state what the regular market price at Columbus was at that time, during the month of April, for rails of the quality described here, fifty pounds to the yard?

A. No, sir; aside from that I had no knowledge of any transactions for Columbus.

Q. Aside from this single transaction?

A. Aside from this transaction, I had no knowledge of any particular transaction in rails at Columbus for that month. The general market had dropped off at that time.

Q. Can you state to us about the rate of transportation between

New York and Columbus per ton for railroad iron—say in March, 1880?

A. I should say, from my recollection of the rates at that time, between five and six dollars a ton.

Q. In case you made a special effort to get a quick and prompt delivery, would or would not that effect the rate of transportation.

A. I should not suppose it would, materially.

141 Q. What I refer to is whether you shipped by the White line or Star line, or whether it came through as common freight.

A. The White line and Star line? I don't know that they ever engaged in the transportation of heavy freight like that. Their business is confined chiefly to box-car freight.

Q. Would railroad iron be considered as slow freight or rapid freight?

A. Ordinarily it is rather slow freight.

Q. What would be the ordinary rate? You said it might have been done in four or five or six days, but what would be the ordinary transportation as to time between New York and Columbus for heavy freight?

A. Well, should say that in the ordinary course of business, if freight is started from New York and run to Columbus it would be from two to three weeks in reaching the destination. That has been my experience with heavy freights coming from the East. Of course, it varies some. Some car-loads get a good deal better dispatch than others do, but where there is a good deal of freight it is liable to stop in chief transfer yard, and it is different from what it would be if it were travelling along constantly. Freights seldom do that unless they have some special dispatch given to them.

Q. Your attention was called to there being one or two mills for the manufacture of railroad iron at Cleveland. I understood you to state that those, as you understood, were engaged in the manufacture of steel rails.

142 A. What we call the Cleveland Rolling-Mill Co. Its principal business is the manufacture of steel rails.

Q. I was going to ask you whether that was or was not it in the month of March, 1880.

A. I think it was.

Q. Is that the largest rolling-mill in Cleveland?

A. That is my impression.

Q. How is it with the other?

A. I am not familiar with the other mill. The other mill, the last I knew, was manufacturing iron rails; I forget precisely the style of the mill now, but I had some knowledge of the mill at that time, and of their products.

Q. Do you know now, so as to be able to state, whether or not that mill, in the month of March, 1880, was manufacturing steel or iron rails?

A. I couldn't state positively. My understanding of it was that it was manufacturing iron rails at that time.

Q. Do you know about the capacity?

A. No, sir; I couldn't state the capacity. It is understood to be a mill of considerable capacity.

Q. Do you know how full it was at that time or otherwise?

A. I don't know anything about its orders.

Q. From your general knowledge of the market, would there be any difference; and, if so, what, between the market price of rails of this description at Cleveland and at Columbus in the month of March, 1880?

A. I should not suppose there would be a great difference between Cleveland and Columbus at that time.

Q. Have you such knowledge as would enable you to compare the capacity of the mill at Cleveland, which you think was manufacturing the iron rails at that time, with the capacity of the Columbus rolling-mill at that time?

143 A. No, sir; I couldn't state that from any personal knowledge, my knowledge of that mill is more of a general character than anything else.

Q. And the cost of transportation from Cleveland to here, as I understood you, would be about $1.25?

A. Yes, sir; $1.25.

Recross-examination:

Q. I suppose that if any person would get quick transportation from the railroad company that a railroad corporation would be as apt to get it as anybody else?

A. Yes, sir; I think they would.

Q. In regard to the Cleveland mills, while the Cleveland Rolling-Mills Co. did manufacture steel rails, did it not also manufacture iron rails?

A. They have dealt in iron rails, and I suppose they manufactured them; but we never bought a rail of them, and hence I am not prepared to answer that question definitely.

Q. Don't you know that they have dealt for some years extensively in iron rails?

A. Yes, sir; I know that fact, but I know that all our dealings with them have been for steel rails.

Q. Is not the Cleveland Rolling-Mill Co. a co. of very large capital, and don't it carry on a very extensive business in both steel rails and iron rails?

A. Yes; it is understood to be an immense concern.

144 Redirect examination:

Q. You spoke about the relative prices between New York and Columbus in the market for iron rails; can you state how that was in the month of March, 1880, or Feb'y, 1880?

A. Well, as I stated in some other part of my examination, I had no knowledge of transactions for Columbus for the month of March, and hence I would be unable to say positively with regard to that. I should have entertained no doubt, however, that I could have bought rails in Columbus at less than the quoted price in New

York at that time. But I had no transactions; am therefore unable to state with regard to that.

Q. Do you mean the Columbus rolling-mill?

A. If I had been going to buy I should have gone to the Columbus rolling-mill.

Q. Did you buy of anybody else except the Columbus Rolling-Mill Co.?

A. No, sir; I never bought any iron rails of anybody in Columbus but the Columbus Rolling-Mill Co.?

Q. So far as you know the comparison between prices, it is a comparison between New York and the Columbus rolling-mill?

A. Yes, sir; except so far as my general knowledge of what was doing in the western part of the country at that time.

And thereupon the said plaintiff offered no other or further evidence-in-chief, but rested its case-in-chief.

145 Whereupon the said defendant, to maintain the said issue joined on its part, gave in evidence to the jury the testimony of witnesses and certain paper writings connected therewith, being copies of letters, telegrams, &c; which testimony of witnesses and copies of paper writings, &c., are herein set forth in full, and are as follows:

SAMUEL THOMAS, called by defendant, being sworn, testified as follows:

Examined by Mr. HARRISON:

Q. Are you acquainted with Archer N. Martin, of the firm of New York city?

A. Yes, sir.

Q. How long have you known him?

A. I have known him for about three years.

Q. State whether or not you were in the city of New York in December, 1879.

A. Yes, sir; I was there about the 15th of December, 1879.

Q. Did you see Mr. Martin at that time?

A. I did.

Q. On what day of the month?

A. My recollection is the 15th of December.

Q. Where did you see him?

A. I saw him at his office, 34 Pine street.

Q. Had you any conversation or negotiation with him at that time and place in regard to the sale of iron?

A. I had.

Q. Will you please look at the deposition of Mr. Martin and read that telegram? You may state whether you saw that tele-
146 gram after it was written and signed, and before it was forwarded to W. D. Washburn, to whom it is addressed.

Objected to, that it is not the original telegram.

Q. Did you see the telegram which Mr. Martin forwarded to Hon. W. D. Washburn at that time concerning the transmitting [of] the

proposition that you had submitted to Mr. Martin for the sale of iron?

A. Yes; I saw the telegram.

Q. Before it was forwarded?

A. Yes, sir.

Plaintiff's attorney objected, unless it was connected in some proper way.

Q. Please read the telegram.

Objected to.

The COURT: He may say whether he has any recollection about that being the telegram.

Q. State to the jury whether Mr. Martin exhibited to you a telegram purporting to be an answer from General Washburn to a telegram that Mr. Martin sent to Washburn.

A. Yes, sir.

Q. You may state whether you read each of those telegrams.

A. I read each telegram as they were sent and received.

Q. State how soon after Mr. Martin showed you the telegrams that he sent he showed you the answer of Washburn to him.

A. My recollection is that it all occurred in one day.

Q. What day of the month, if you recollect, did you leave Columbus for New York on the occasion when you were there on the 15th of December?

A. My recollection would be that it was the 12th of December.

147 Q. How long have you been residing in the city of Columbus?

A. I have lived here for nine years.

Q. When did you become interested in or have any position in the Columbus Rolling-Mill Co.?

A. I became interested in the Columbus Rolling-Mill Co. and held a position in connection with its affairs commencing the summer of 1872.

Q. How long did that continue?

A. I was actively engaged in one capacity or another in connection with the rolling-mill affairs up to about a year ago.

Q. Have you any interest or connection with the company at the present time?

A. I have nothing, except a nominal position. I am a member of the board of directors. I have no actual duties to perform.

Q. What position in the company did you occupy in December, 1879, and in March, 1880?

A. I think I was vice-president and general manager.

Q. What position did W. A. Harrison hold in the co.

A. He held the position of secretary of the co.

Q. Was that the only position he held?

A. He was at that time assistant general manager.

Q. Under whose direction did he transact whatever business he did transact?

A. Entirely under my direction.

Q. When did his connection with the company begin?

A. His connection began at the same time mine did, the summer of 1872.

Q. What is the capacity of the Columbus rolling-mill; how many iron rails can it make per day or per week, or both?

Objected to; objection overruled; exceptions.

148 A. Our production is about 165 tons per day; the yearly production of the mill was from 30 to 35 thousand tons.

Q. How many rails could the mill turn out in March, 1880; was there any difference in its capacity then in that respect and its present capacity?

A. No, sir; it was in condition to produce as many rails at that time as at the present time.

Q. How are such iron rails as are mentioned in the telegraphic correspondence that took place between your co. and Mr. Hatch made; are they made out and out, or are they made by rerolling old iron rails?

A. They are made entirely out of old material.

Q. State to the jury what was the market value of iron rails of the weight and description given in letter that has been read of December 5th, 1875, by Mr. Harrison, as secretary of the company, to Mr. Hatch, and state also whether there was any fluctuation in the market value of iron at Columbus in iron rails during the month of March, 1880?

A. The market price of that class of iron of the Columbus rolling-mill at that time was about $55 per ton; that was perhaps in the early part of the month; toward the end of the month $52 and $53 was the market value of that iron in this city.

Q. How does the market value of iron, such as this in the city of Columbus, compare with the market value of such iron in the city of New York.

A. During my nine years' connection with the Columbus Rolling-Mill Co. iron rails have always been lower in the city of Columbus, Ohio, than they have been in New York city.

149 Q. Have you ever been in the Cleveland rolling-mill?

A. Yes, sir.

Q. You may state, if you know, what the capacity of that mill is.

A. They can produce about 40,000 tons per year at one mill.

Q. I am inquiring of the mill which has been called the Cleveland rolling-mill.

A. That is 40,000 tons a year.

Q. Is there another rolling-mill there?

A. Yes, sir.

Q. What is the name of that?

A. It is the Cleveland Iron Co.'s rolling-mill. I think that is the name.

Q. Do you know about what the capacity of that mill is?

A. About 25,000 tons.

Q. What kind of rails does the last-named co. turn out—steel or iron?

A. Iron and steel.

Q. Iron and steel both?

A. Iron and steel both.

Q. Do you know whether they dealt in iron rails as well as manufactured them at that time?

A. No, I don't.

Q. What other rolling-mills are there which manufacture iron rails of this description in this vicinity or State?

A. They manufacture iron rails at Cincinnati and at Indianapolis. Those two points are the nearest ones aside from Cleveland.

Q. Is there a rolling-mill which manufactures such rails as these at Youngstown, Ohio?

A. I think not at present.

150 Q. Was there in '79 and '80?

A. Yes, sir; I think there was a mill at that time.

Q. Can you state to the jury, of your own knowledge, what the capacity of that mill was when it was running?

A. About 25,000 tons.

Q. You may state whether or not the New York market controls the Columbus market as to the price of iron of this description?

A. It does not.

Q. Do you know what the price of transporting iron rails from Cleveland to Columbus is?

A. Yes, I have had experience in moving rails from Cleveland to Columbus.

Q. What are the rates?

A. About $1.25 per ton; sometimes lower; that is the ordinary rate.

Q. How long does it take to transfer, say, two thousands tons of iron rails from Cleveland to Columbus in the ordinary way?

A. You can usually get about 20 cars a day without extra exertions.

Q. How many do they carry on a car?

A. About 15 tons to a car.

Q. That is by ordinary transportation?

A. Yes, sir.

Q. Within what time could the Columbus Rolling-Mill Company, in the month of March, '80, have furnished 2 thousand tons of iron rails after an order for them was given?

A. They could have furnished it in 15 days after an order was given, in the month of March, '80.

Q. State to the jury what you know, if anything, in regard
151 to importations into the United States of iron rails during the latter part of 1879 and the fore part of '80.

A. I know of my own knowledge the importation was very large, and the supply of old rails at all the importing places, Baltimore, Philadelphia, and New York, was very large and abundant.

Q. Do you know about what time in 1879 iron commenced to rise?

A. In '79 you say?

Q. Yes, or '80.

A. The importation of rails into this country in quantities sufficient to make any impression commenced about Sept., '79. The first advance in the price of rails, from a very low price, was in July, 1879, increasing until the crash.

Q. When was that?

A. That commenced in the latter part of February and grew worse each day.

Q. Did the importation consist of new rails exclusively, or did they consist of old rails as well as new?

A. It was everything in the shape of iron, old and new.

Q. To what place was the iron that was imported consigned—what ports were they shipped to?

A. Shipped to New Orleans, Baltimore, Philadelphia, New York, and Boston, which are the large rail-importing places.

Q. You may state, if you know, what the fact is in this respect; whether what is quoted and generally reputed to be the market value of iron rails sometimes is fictitious when none or very few sales are being made.

A. It is absolutely always fictitious on a declining market.

152 Q. Always on a declining market?

A. Always on a declining market. The old prices are left standing in the newspapers, while the real prices, at which sales are being made, drop down, from the fact that the newspapers are nearly always interested in sustaining the price.

Q. What is the fact in regard to sales being actually made at such times below the prices at which iron is quoted in price-lists in the newspapers?

A. Such sales are made; yes, sir.

Q. Are they made at the rate quoted or below the rate?

A. Oh, they are made below it.

Q. State what the fact is in regard to the Columbus rolling-mill making contracts, getting orders for delivery of iron, whether they are always made and taken for delivery months ahead, or whether they are taken sometimes for immediate delivery?

A. Sales are made by the Columbus Rolling-Mill Co. in all the different ways you have named for immediate delivery, for future delivery—sometimes for long time, and sometimes for short time.

Q. What is the fact in regard to iron rails being made when there are no orders or contracts on hand to be filled; are the- ever made when there are no orders or contracts on hand to be filled?

A. Yes, sir; if the co. has means they can manufacture products on hand in large quantities. The extent of their means usually determines the amount of rails they carry waiting for orders.

Q. Do you know of your own knowledge whether the Columbus rolling-mill had any iron rails actually on hand and ahead of any orders that were being made in the month of March?

153 A. Yes, sir; they had.

Q. Do you know the quantity they had on hand?

A. No, sir; I could not tell you the quantity.

Q. Who kept the books of the rolling-mill?

A. We have changed book-keepers so often I am not certain I can tell you his name. Mr. Harrison can tell you who that person was.

Q. Could the Columbus rolling-mill have made and delivered two thousand tons of iron during the month of March, '80, upon an order giving for that quantity of iron to be deliver during that month at Columbus?

A. Yes, sir.

Cross-examination by Mr. CUTCHFIELD:

Q. General Thomas, do you remember whether you had many orders on hand in March, '80, not filled?

A. No, sir; we were idle most of the month for want of orders.

Q. In March?

A. Yes, sir.

Q. How did it come you were idle in that month?

A. I don't know. I was managing that part of the business particularly, and solicited trade, but could not get it.

Q. Were not the orders you might have had crippled very much in number by the high price of iron in March?

A. I didn't think there were any transactions in high priees at all.

154 Q. That don't answer my question quite. Would you not have had more orders for iron rails at your mill in March if prices had been lower?

A. Yes, I think we would.

Q. Then you had a falling off of orders, had you not, from Dec. to March?

A. The falling off commenced about the first of January.

Q. And continued on up to what time?

A. Continued on until the first of June.

Q. Until prices became lower?

A. Yes; until prices drifted to a very low point.

Q. Were you manufacturing rails in Jan., Feb., and Mar. as largely as you had been when prices were lower?

A. No, sir.

Q. Then the falling off in the amount of rails you were then producing at that mill during Jan., Feb., and Mar. was the result of high prices?

A. Well, that would be the conclusion from the situation of the market.

Q. You have spoken about the high prices during those three months particularly; you had to pay more for old rails than you did when the prices were lower for new rails?

A. Yes, sir.

Q. What is the usual price for manufacturing the old rails into the new, per ton?

A. Our prices ranged from fifteen to twenty dollars.

Q. Do you remember the price of old rails during the months of Jan., Feb., and Mar?

A. I think the price of old rails in Jan. and Feb. was about $40.

The latter part of Feb'y, perhaps about the 20th to the middle of Mar., they were worth about $37, and they rapidly declined from that time.

155 Q. Was there any other rolling-mill in Columbus in Jan., Feb., or Mar., '80, but your mill that made iron rails?

A. There was no other rolling-mill that made the same class that we did.

Q. Then there was no mill at Columbus at which the plaintiffs could have obtained two thousand tons of this kind of iron rails in Mar., '80, but your mill?

A. No other mill in Columbus.

Q. You have spoken about the large importations of rails which commenced, probably, in Sept., '79. What stimulated the importation of iron rails to this county?

A. Very large consumption in the summer and fall of '79 and increased prices.

Q. It was great demand and increased prices that stimulated importation?

A. Yes, sir. We were making rails at $35 a ton when the importation commenced.

Q. You say the importation continued until about what time?

A. It continued on during all the year '80, and it reached its highest volume in the months of Jan., Feb., Mar., Apr., and May, perhaps the first six months. I think the importation of railroad iron of all kinds was larger.

Q. Do you know what price prevailed for railroad iron of the kind we are talking about in New York in Jan., Feb., and Mar., '80?

A. Yes. I had access of a good deal of that kind.

Q. What were the current prices as quoted and known among dealers in that sort of material?

A. Well, they were made all sorts of ways. I don't think there was a sale for cash made in New York above sixty-two or three dollars a ton.

156 Q. What was the reported current price?

A. The reported current price for which months?

Q. Say, for Feb.

A. For Feb. it was from sixty-three to sixty-seven dollars a ton, as quoted in the iron markets at that time.

Q. What was it in Jan.?

A. In Jan. it was quoted from sixty-five to seventy dollars.

Q. In March?

A. In March the quotations were from fifty-seven to sixty-two dollars.

Q. How does it come that the current price was so much lower in Columbus than in New York?

A. The New Yorkers were not selling any rails at those prices.

Q. You say those were the current prices?

A. No, sir; I said they were the quoted prices, not the current prices. I thought you were asking for the quoted price.

Q. State to the jury the difference between quoted prices and current prices.

A. There are no such thing as current prices. Railroad contracts are made in New York for railroad iron on the best terms we possibly can. There is no such thing as current prices for railroad iron as when applied to flour, groceries, &c. Paper quotations are made, and parties who have iron to sell meet buyers, and they negotiate sales; and I have stated always below those newspaper quotations. Now, then, I have answered, I believe, that I do not think at any time during the highest months that iron sold in New York above $62 for cash. Now, I couldn't tell you and follow the weeks and months on down to March, because I didn't post myself, except as to what was absolute sales—that is, by conversation to people who were negotiating.

157 Q. You say the quoted price in Feb. was from sixty-five to seventy dollars?

A. I said from sixty-five to seventy in Jan.

Q. Do you know of a sale in January in New York for less than sixty-five dollars? Do you know of a sale of iron—say two thousand tons of iron of the kind in controversy—sold in New York in January for less than sixty-five dollars a ton?

A. Yes; I know of one sale of sixty-two dollars; that made me so positive about it.

Q. One sale?

A. Yes, sir.

Q. Do you know of any more than one?

A. No, sir; I don't know that I recollect of any more than that one.

Q. You kept a general run of the markets, as a rolling man?

A. Ordinarily, I suppose.

Q. If it had been common to sell at sixty-two dollars, or at much less than the quoted price, would you not have known it?

A. It wasn't common to sell anything at those prices or sell anything. It wasn't sold.

Q. Do you undertake to say that you knew what sales were made?

A. No, sir; I don't.

Q. Do you undertake to say they were made at less than quoted prices?

A. Whatever sales were made were made by quoted prices generally.

Q. That is your opinion?

A. You were asking me for my opinion.

158 Q. No. I was asking you what you knew about sales being made for less than $65 in Jan. You said you knew of one sale. Did you know of any more than one as low as $62?

A. I have answered that.

Q. Take Feb. What do you say the price was?

A. Feb., from $63 to $65.

Q. What actual sales do you know being made in New York at less figures than those?

A. I know of sales as low as $60 in Feb.

Q. How many?

A. About twelve hundred tons; all that I know of.

Q. Just one sale?

A. One sale that I recollect now. I don't recollect more than one sale.

Q. In March; give us the figures again—what you say the quoted prices were in New York?

A. The quoted prices in New York were $57 to $62.

Q. What sales do you know that were actually made in New York at less than $57, or even less than $62?

A. I don't know anything made in New York absolutely below $56 in March.

Q. How many sales were made as low as that, and what quantity?

A. Well, not a large lot; not perhaps over a thousand tons; not much disposition to buy at those prices.

Q. Sales were not made because prices were high; that was your idea, is it?

A. There was a difference between buyers and purchasers; they couldn't agree on the price.

159 Q. The others were holding to their iron pretty stiff, were they not?

A. I don't think the demand amounted to very much at that time.

Q. They were holding the iron pretty stiff?

A. No, sir; I think it was pretty limber; nobody would make any offers.

Q. Don't you know that sales were discouraged by the high prices, and that is the reason there were not more sales?

A. No; I don't think it bears that construction from my own knowledge of the situation.

Q. Tell us what discouraged purchasers then?

A. I don't think there was any need of the iron; the supply ran away ahead; it was winter time.

Q. No demand for it?

A. No demand for it. If anybody had offered most any price cash they would have got their iron at that time.

Q. What is the basis or origin of quoted prices for iron; we find quotations are at $68 to $70 in a certain month; where does that come from?

A. Do you want me to tell you exactly how it comes?

Q. Yes; tell us.

A. It originates in New York, as a general thing, among the reporters for certain newspapers, who run around among brokers and talk about the iron business, &c.; and in their discussions they discuss up and down this thing and the other; whether they can make money out of this, that, and the other at the price when the iron was going up like it was from $35 to $60, and they constantly aimed to carry it up further, and they raise it every day or two; and, of course, some consideration goes constantly to these young men, and they run it up to just as high a price as they can possibly, and offer

no excuse for it; then, after they get it there they let it stand
160 for quite a length of time. The real market goes away out from under it, and prices are made all sorts of ways. I have known it to be made $15 a ton. I have made the price for the Columbus Rolling Mill $15 below the market, (in) the papers lying right on the desk, and this is daily the case with nearly all iron supplies of that character, especially when there has been a large advance in material, as there had been at that time.

Q. You refer to boys running around there?

A. Yes, sir.

161 Q. The quotations would come from the iron dealers to the boys?

A. Brokers. What we call iron brokers make those prices.

Q. Iron brokers?

A. Yes, sir; but they are speculators in iron, and they are interested only in one side of the market.

Q. The Railway Age contains the current prices regularly, does it not?

A. No, sir; it does not claim to be a journal for that purpose particularly. It devotes itself to railroad matters—the Iron Age, and papers of that class.

Q. Those papers contain the current prices. Are those current prices not the prices that regulate the price of iron at every point, more or less?

A. No, sir. I have seen in those papers Bessemer steel quoted at $80 a ton, and at the same time the mills of this country were selling it at $58. Those papers are in New York and are governed and controlled by one side of the market, just as I have explained. The brokers are constantly interested in getting the highest prices possible. Manufacturers have nothing to do with getting market reports published; we get with each other and arrange our prices.

162 W. A. HARRISON, called by defendant, being sworn, testified as follows:

Q. State how long you have resided in Columbus?

A. About 16 years.

Q. Have you ever been in the employ of the Columbus Rolling-Mill Co.?

A. Yes, sir.

Q. When were you first employed?

A. About July, 1872.

A. What services were you employed to render?

A. From the first, I was engaged, I believe it was, to act as time keeper.

Q. The next?

A. Then book-keeper; I was afterwards cashier; more latterly secretary.

Q. When did you become secretary?

A. As near as I can recollect, about 1876.

Q. Do you still hold that position?

A. No, sir.

Q. When did you cease to be secretary?

A. In Jan., '80.

Q. What position do you now hold, if any?

A. I was made treasurer then, and I now hold the position of treasurer and general manager. I was made general manager in July, 1881.

Q. Who was general manager for the Co. prior to '81?

A. General Thomas.

Q. Under whose direction did you transact whatever business you did for the company up to Jan., '81?

A. Under his.

Q. State to the jury how many rails the Columbus Rolling-Mills can manufacture per day, or per week?

163 A. We can manufacture of what we call heavier rails, from 50 lbs. to 60 lbs. per yard—we can manufacture from 150 to 165 tons per day; of lighter rails a smaller quantity.

Q. Well, such rails as 50 lbs?

A. From 150 to 165 tons per day.

Q. Do you recollect what the market value of such rails as are described in your letter of December 8th, '79, was at the city of Columbus?

A. Fifty-four dollars.

Q. Cash on delivery?

A. I don't understand your question.

Q. The cash to be paid on delivery of the iron. I am speaking now about the price of iron in March. Suppose you had taken an order on the first day of March for the delivery of two thousand tons of iron rails on the 16th of March, '80, the iron to be paid for by the purchaser on the 16th, when delivered on board the cars?

A. Well, the trade papers give quotations considerably higher than are paid. We were unable to make any sales at all at those figures; in fact, we were entirely unable to make any sales of new rails at all during that month.

Q. Take the quoted prices, do you recollect whether the price fell between the last day of Feb. and the first day of Apr., '80? I am speaking now merely of quotations in the newspaper.

A. My recollection of it is that it fell from the quoted prices of $63 or $64 down to about $58.

Q. What is the fact as to there being a difference in the price quoted in the newspapers and the actual price at which iron rails were sold on delivery?

164 A. During the spring of that year there was a great deal of speculation in New York in iron of all kinds, and the speculation price was put in the paper and not the price for which the rails could have been purchased.

Q. Was the Columbus Rolling-Mill Co., in the month of March, '80, in a condition to furnish iron that might be ordered for delivery during that month?

A. Yes, sir.

Q. Do you recollect whether you had any iron rails on hand at that time?

A. We had some; we had in the neighborhood of a thousand tons of old rails.

Q. If an order had been given, say on the first of Mar., for two thousand tons of iron, delivered on board the cars at Columbus by the Columbus Rolling Co. during the month of March, had the company the ability to fill such order?

A. Yes, sir.

Q. About how many days' run would be required to manufacture two thousand tons of such iron rails at the Columbus Rolling-Mill?

A. From two to three weeks. We never give an order of that size to require the whole amount delivered in a few days for the reason that the railroad co. cannot and do not furnish cars for the prompt transmission of the important works.

Q. That is one of the reasons why that is not done?

A. Yes; and railroad co. in building cannot lay it at once.

Q. Do you recollect a gentleman by the name of Woolsey being at your office as secretary of the co.?

A. Yes.

Q. Do you recollect when that was?

165 A. I think it was in the middle of Jan.; about the 19th, or along there.

Q. Do you recollect of his serving a notice upon you at that time—a written notice?

A. Yes, sir.

Q. You may state what you said, if anything, after that notice was delivered to you in regard to his withdrawing the notice.

A. He was in our office some time, and we had been talking on this matter and others, and I made a joking remark to him that he had better withdraw his notice, as we had no contract with his company, and it was unnecessary to deliver that to us. He replied that if we would give a contract to him for that quantity of iron he would withdraw his notice.

Q. What did you say in reply to that?

A. I think I laughed at him.

Cross-examination by Mr. OLDS:

Q. Did you do anything else besides laughing at him; that is, did you say anything?

A. No, sir; I don't remember of saying anything; I might have said that we wouldn't give a contract; that we didn't recognize it.

Q. That was what I was desiring to arrive at, whether you didn't substantially decline to recognize any contract—to give him a written contract?

A. I might have done so; at that time I was not the officer of the co. that made the contracts.

Q. I suppose that General Thomas was that officer, wasn't he?

166 A. Yes, sir.

Q. Wasn't he there on the same day, and didn't you communicate with him?

A. He was in Columbus.

Q. Wasn't he at the office of the co.?

A. He may have been in there. He was engaged that day with some of his railroad partners.

Q. What is your recollection about showing him the written notice, or demand, or paper, whatever it was, that Mr. Woolsey gave to you?

A. Mr. Woolsey gave me the paper, and I went out of the rolling office into the railroad office, where General Thomas was.

Q. And you showed him that paper, did you not?

A. Yes, sir.

Q, What did General Thomas do in that connection?

A. He came out of the railroad office into the rolling office with me and wrote a reply to Mr. Woolsey's letter.

Q. (Handing paper.) You may state whether you recognize that as being the reply, being "Exhibit Q," attached to this deposition.

A. Yes, sir.

Q. Now state whether your conversation with Mr. Woolsey, in which you asked him to withdraw the notice, and he said he would if you would recognize and sign the contract, and you laughed at him, was before or after this reply was returned to him by Gen. Thomas.

A. It was after that reply was given.

Q. Can you state how your rolling-mill was employed in Dec., '79, and Jan., Feb., and Mar., '80?

A. Dec., '79, as I recollect it, we were pretty full of work, and Jan., Feb., and Mar. we did but very little?

167 Q. Going back now to Dec., '79, when you say you were pretty full of work, how full of orders were you for rails?

A. We were finishing up the orders we had taken during the fall.

Q. Taking an order, for example, on the 19th or 20th Dec., '79, about what time would you require to fill that order in the order in which orders are taken upon your books?

A. About that time I don't think it would have taken perhaps four days, perhaps six or seven or eight days.

Q. How was it about the last of Dec., '79?

A. We shut down for lack of orders.

Q. What were you doing about the middle of Jan.?

A. The middle of Jan., doing nothing; we had no orders.

Q. Can you tell us when you shut down because you had no orders?

A. We never run the mill unless we have an order for the material that we are going to make.

Q. Let me ask you whether one reason why you were not running the mill, in addition to not having orders, was on account of high price of material—old rails—which you are in the habit of recasting into new rails?

A. That may have had something to do with it, but the first cause was that we had no orders. It was no use having the material. We had a lot of stock on hands, but we couldn't make any sales.

Q. With the mill closed down in that way what would you be doing, particularly yourself, I mean?

A. Getting up the affairs of the company into shape, and collecting bills in.

168 Q. Would that keep you so busy that you would not have time to respond to orders if you had received them?

A. I don't understand your question.

Q. What I mean by the question is, whether the manner in which you were occupied the last of December, '79, would have made you so busy that you could not respond, as secretary, to the order or orders if you had received them at that time?

A. That season of the year I am very busy, and usually have to work every evening. It is the time of year when we get up our balance sheets to submit to our stockholders, and from along about the 20th of Dec. until, say, about the 1st of Jan. I am very busy.

Q. You will see that you have not exactly answered my question. (Question repeated to the witness.)

A. The amount of work I had to do I hadn't time to give the consideration necessary to make a proper answer was why I say I didn't have time to reply to it, and wouldn't have time.

Q. Now, asking my question as to orders generally, do you intend to make this refer to this particular order?

A. Yes, I will make it general. I say that I was too busy to give any orders the attention they required at that time.

Q. Who was attending to orders, if you were not?

A. General Thomas.

Q. For how long a time was your mill shut down during the winter of '79 and '80?

A. I can answer that by stating what we made during those months and what our capacity was.

Q. Can't you answer it in a more simple and direct way than that?

169 A. Without my records here I can't answer here just how many days we run and how many we didn't. I can state the amount we produced during that time.

Q. I understood you to say in answer to counsel upon the other side in the month of March you had upon hand about a thousand tons of old rails?

A. Yes, sir.

Q. What I wish to know is whether you refer to old rails as stock recast, or rails which you had on hand made out of old rails which you called old because they hadn't been sold?

A. No, sir. I called them old rails as material to be made into new rails. When they have been rolled and reworked we call them new rails.

Q. During the month of Mar., how many new rails had you on hand, by which I mean rails ready for sale in the market?

A. We had none.

170 Redirect examination:

Q. Do you recollect whether General Thomas was absent from the city of Columbus during the winter of '79 and '80? If so, state how long, and where he was at that time.

A. How early a date do you mean?

Q. Well, commence in Dec. Do you recollect whether he was absent in December?

A. General Thomas was absent a great deal during December and the winter and spring months of '80.

Q. Do you recollect what time in December he left the city to be absent some time?

A. He left about the middle of the month.

Q. You cannot come any nearer the exact time than about the middle of the month?

A. About the middle, I think.

Q. How long did he remain absent at that time?

A. I think he was absent about a week; probably a day or two less than that.

Q. You don't know how long?

A. I couldn't state how long.

Q. Do you remember where he went on that occasion?

A. He went to New York, sir.

Q. Do you know how long he staid at home after he got back from that trip?

A. I think he came home and was here a few days and then went away again.

Q. How long was he absent on the second occasion?

A. I think he was absent about a week.

Q. You stated, in answer to a question on the other side, that at that time you were acting under the direction of General
171 Thomas and had no authority to make contracts?

(Mr. OLDS: I didn't ask that, and the witness didn't say that.)

Q. In the answer that you made in reference to the proper officer to make contracts, did you refer to the matter of Mr. Woolsey's order?

A. Yes, sir.

Q. What time was that?

A. That was the middle of Jan.

Q. Had you any power before that to make contracts?

A. No, sir. Up to the meeting of the board of directors in the latter part of Jan., '80, General Thomas was the officer that made contracts.

Q. You, of course, frequently wrote telegrams and addressed letters under the direction of General Thomas?

A. Under the direction and orders of General Thomas.

172 UNITED STATES OF AMERICA.

SOUTHERN DISTRICT OF NEW YORK, } ss:
*State, City, and County of New York,* }

In the Circuit Court of the United States for the Southern District of Ohio, Eastern Division.

THE MINNEAPOLIS AND ST. LOUIS RAILWAY COMPANY
*vs.*
THE COLUMBUS ROLLING-MILL COMPANY.

Be it remembered that on this twenty-second day of November A. D., 1880, I, Harold Smith, a notary public in and for the city and county of New York, in the southern district and State of New York, did call and cause to be and personally appear before me at the office of Clark, Post and Martin, at No. 34 Pine st., New York city, in said State, county, and district, Mr. Archer N. Martin to testify, and the truth to say, on the part and behalf of the defendant in a certain suit or matter of controversy now depending and undetermined in the circuit court of the United States for the southern district of Ohio, eastern division, at the city of Columbus, in said district, wherein the Minneapolis and St. Louis Railway Company is plaintiff, and the Columbus Rolling-Mill Company is defendant; and the said Archer N. Martin, being about the age of thirty-five years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, and being carefully examined by Mr. S. F. Marsh, counsel for defendant, and by Mr. H. D. Burnett,
173 council for the plaintiff, he did thereupon depose, testify and say as follows:

ARCHER N. MARTIN, witness called on part of defendant, pursuant to notice herein, being duly sworn, deposes and says:

Direct examination by Mr. MARSH:

1. State your name, age, residence, and occupation.

A. My name is Archer N. Martin; my age is thirty-five years; my residence is Summit, New Jersey; my occupation is banker and iron merchant.

2. Where is your place of business?

A. No. 34 Pine st., New York city.

3. Were you ingaged in that business during the month of Dec., '79?

A. Yes, sir.

4. Are you acquainted with Hon. W. D. Washburn, the president of the Minneapolis and St. Louis Railway Co., the plaintiff in this action?

A. Yes, sir.

5. Did you meet him here in December last; and, if so, about what time?

A. I should think it was somewhere about the 10th and 15th;

between those dates, I mean. I don't know exactly what date it was.

6. Did you have any conversation with Mr. Washburn at that time in reference to supplying his road with rolling-stock, rails, and other materials, for the construction of his railroad?

A. Yes, sir; we made a contract with Mr. Washburn for supplying him with a lot of cars.

7. Are you acquainted with General Samuel Thomas, the superintendant and general manager of the Columbus Rolling-Mill Co., the defendant in this action?

A. Yes, sir.

174 8. State whether you met him in your office in Pine St. in December last; if so, at what time?

A. I met him, I think, the day after Mr. Washburn had left to go to Washington. I cannot fix the date exactly, but it was between those two dates. It may have been the 15th; probably it was.

9. Did you have any conversation with Mr. Thomas at that time in reference to iron rails for the Minneapolis and St. Louis Railway Co., the plaintiff in this action?

A. Yes, sir.

10. Can you fix for certain the date on which you had this conversation with Mr. Thomas?

A. I think it was the 15th. I think I wrote that telegram immediately after that conversation.

11. What information, if any, did you receive from Mr. Thomas in respect to supplying iron rails by his co. to the plaintiff?

Objected to as incompetent and irrelevant.

A. Yes; I had a conversation with him.

12. State what information you received from him at that time.

Same objection.

A. Well, after I told General Thomas that I could sell about 2,000 tons of rails to the Minneapolis and St. Louis Railway Co.—I don't know that I mentioned the name of the road at first; I think I said some western railroad. After considerable difficulty I got him to name a price of $55, at Columbus. He wanted more, but I finally got him down to that price; then I sent this telegram to Mr. Washburn.

13. What, if anything, was said by Mr. Thomas at that time about having made an offer to the plaintiff before leaving home?

Same objection.

A. Mr. Thomas said that there had been some negotiations
175 some time previous to that with this same company, but that they had not accepted his offers, as I recollect it. I don't recollect the exact phraseology, but he said that this was the lowest price that he would take.

[On side in pencil:] Ruled out.

14. After the conversation with Mr. Thomas, did you have any

communication with Mr. Washburn, the president of the Minneapolis and St. Louis R'y Co.?

A. I sent him this telegram here (producing letter-press copy of it).

Answer objected to as not responsive to the question.

15. Will you produce the telegram which you sent to Mr. Washburn?

Objected to as incompetent and irrelevant.

A. I sent this telegram, being as follows:

"NEW YORK, *December 15th*, 1879.

"Hon. W. D. Washburn, House of Representatives, Washington, D. C.:

"Can probably furnish you two thousand tons, fifty iron rails, at Columbus, Ohio, at fifty-five dollars cash, March delivery, if answered immediately by wire. Another large advance in British iron. Doubt your doing better than this price.

"CLARK, POST & MARTIN."

Telegram objected to as incompetent and irrelevant. No objection made, however, as to its being a copy, &c.

16. Did you receive any answer to that telegram; if you did, will you produce the original?

Objected to.

A. We received this telegram (produces a telegram), of which the following is a copy:

"WASHINGTON, D. C., *Dec. 15th*.

"Clark, Post and Martin, New York:

"Rate from New Orleans to Burlington, five dollars and fifty-five cents. Would not accept Columbus offer at present.

"W. D. WASHBURN, *P't*.

"16 D. H. L."

WITNESS: We had some talk about the rate of some foreign iron.

[On side in pencil:] Excepted to.

176 & 177 It is stipulated by and between the counsel of the respective parties herein that the telegrams, of which the foregoing are copies, shall be received in evidence without further proof, or the production of the originals, subject, however, to all obligations as to competency and relevancy.

Cross-examined by Mr. BURNETT:

17. Mr. Thomas, of whom you have spoken in your testimony-in-chief, I understand you to say, is the general manager of the defendant company, The Columbus Rolling-Mill Co.?

A. Yes, sir; I understand it so.

18. Is your house a large dealer in railroad iron rails and supplies?

A. Principally in rails—old metal and new metal; not in small supplies.

19. Were you engaged in that business from December, 1879, to March, 1880, inclusive?

A. Yes, sir.

20. Have you had occasion to look to see what are the freight rates per ton of railroad iron—gross ton—from here to Columbus?

Objected to as incompetent and irrelevant.

A. I think we have memoranda.

21. Can you state what it was in March last?

A. I could not now without looking it up. They vary all the time. Rates vary whether navigation is open or not.

22. You cannot now state from recollection?

A. No, sir.

ARCHER N. MARTIN.

Subscribed to and sworn to before me, this 23d day of November, 1880.

HAROLD SMITH, [SEAL.]
*Notary Public, N. Y. Co.*

178 Circuit Court of the United States for the Southern District of Ohio. Eastern Division.

MINNEAPOLIS AND ST. LOUIS RAILWAY COMPANY, Plaintiff,
*versus*
COLUMBUS ROLLING-MILL COMPANY, Defendant.

It is hereby stipulated and agreed by and between the parties to the above-entitled action that the testimony of the witnesses examined in New York City be taken down and written out by a stenographer. It is further stipulated and agreed between the parties hereto that on the 15th day of December, 1879, Archer N. Martin, of the firm of Clark, Post and Martin, transmitted in the ordinary course of telegraphic communication to Hon. W. D. Washburn, at Washington City, D. C., a telegram, of which the following is a copy, to wit:

"NEW YORK, *December 15th*, 1879.

"Hon. W. D. Washburn, House of Representatives, Washington, D. C.:

"Can probably furnish you two thousand tons fifty iron rails at Columbus, Ohio, at fifty-five dollars cash. March delivery if answer immediately by wire. Another large advance in British iron. Doubt your doing better than this price.

CLARK, POST AND MARTIN."

And the said telegram was received by the said W. D. Washburn on the 15th of December, 1879, and that said Washburn, on the same day, transmitted, in the ordinary course of telegraphic communication from Washington, D. C., to said Clark, Post, and Martin, in re-

179 ply to the above telegram, a telegram of which the following is a copy, to wit:

"WASHINGTON, D. C., *Dec. 15th.*

"Clark, Post, and Martin:

"Rate from New Orleans to Burlington, five dollars and fifty cents. Would not accept Columbus offer at present.

"W. D. WASHBURN, *P't.*"

"16 D. H. L."

The parties hereto waive the production in evidence of the originals of said telegrams, and agree that the above copies shall be received in evidence and have the same force and effect as the originals; subject, however, to the same legal objections as the originals might be if produced.

THE COLUMBUS ROLLING-MILL COMPANY,
By its Att'ys HARRISON, OLDS AND MARSH.
HENRY L. BURNETT,
*Counsel for Pl'ff.*

180, 181, & 182 And thereupon the said defendant offered no other or further evidence in defense, but rested its case in defense.

Whereupon, no other or further evidence being offered by either party, both of the parties rested the case upon the foregoing testimony and evidence as hereinbefore set forth, and no other.

And thereupon, after arguments of counsel to the court and jury upon the law and evidence in the case, the court proceeded to charge the jury, and delivered its charge as follows:

183 *Charge to the Jury.*

THE MINNEAPOLIS AND ST. LOUIS RAILWAY CO.
*vs.*
THE COLUMBUS ROLLING-MILL CO.

SWING, J.

GENTLEMEN OF THE JURY: This is a case brought by the plaintiff against the d'f't to recover damages which they allege accrued to them by reason of the violation of a contract which they claim was entered into between the plaintiff and defendant.

The plaintiff alleges in his declaration substantially that on the 19th of December, 1879, the plaintiff agreed to buy of the defendant, and the defendant sold to the plaintiff, two thousand tons of iron rails, of the weight of fifty pounds per yard, at the price of $54 per ton gross, to be delivered free on board cars at the mill of said defendant at Columbus, Ohio, in the month of March, 1880, and to be paid for by the plaintiff in cash when so delivered; that the plaintiff has performed the conditions of said agreement on its part, and was always ready and willing to accept the said iron rails, and to pay for the same according to the terms of said agreement, of which the defendant had due notice, yet the defendant did not deliver said iron rails, or any part thereof, to the plaintiff free on board cars at

its mill in Columbus in the month of March, 1880, though duly requested thereto, but wholly neglected and refused so to do, to the damage of the plaintiff $32,000—for which sum it prays judgment.

184 The defendant answers the petition of the plaintiff substantially by admitting the corporation of the parties and the citizenship of the defendant as alleged in the petition, and that it did not deliver the 2,000 tons of iron rails or any other quantity to the plaintiff, but denies every other allegation of the petition. In order to entitle the plaintiff to recover it must satisfy you that the contract was entered into as it alleges, and that it has kept and performed its part of the contract, or has offered so to do, or has been ready, able, and willing so to do, and that defendant has failed to perform its part of the contract, and plaintiff has suffered damage thereby. It is claimed by the plaintiff that the contract in this case was entered into by letter and telegram by an offer on the part of the defendant by letter to sell 2,000 tons of iron rails for $54 per ton, and the acceptance by the plaintiff by telegram and a letter of that proposition.

That a contract may thus be entered into is well settled, and just as well settled that a proposition and offer in which a specified time is given for acceptance is not a contract unless the offer be accepted within a specified time.

In regard to contracts of this character there are certain well established principles. First. That when an offer is made and a time certain given for its acceptance, that the person making such offer, if no consideration has been paid, may any time before the acceptance recall the offer. Second. That the person to whom the offer is made may, if it be not withdrawn, accept the offer at any time

185 within the prescribed day. Third. That in order to constitute a contract by an offer and acceptance, the acceptance must be of the offer as made, for there can be no contract unless there exists the assent of the minds of the parties to the same terms and conditions, and until there is this coming together, this uniting of the minds, there exists no contract.

It is well settled, also, that the person to whom the offer is made may suggest modifications of the offer during the time within which the offer exists by the terms of it. and that he may reject the offer directly, or he may reject it by acts as well as by words. Keeping these general principles in view we will call your attention to what is claimed in this case as constituting the contract between the parties.

The first paper introduced in evidence is a letter which reads as follows:

"Minneapolis & St. Louis R'y, Chas. F. Hatch, General Manager.

"MINNEAPOLIS, MINN., *Dec. 5th*, 1879.

"Rolling-Mill Co., Columbus, O.

"GENTS: Please quote me prices for 500 to 3,000 tons 50-lb. steel rails, and 2,000 to 5,000 50-lb. iron rails. March, 1880, delivery.

"Truly, yours,

"CHAS. F. HATCH, *G. M.*
"H."

186 On the 8th of December, 1879, the defendant wrote and mailed to the plaintiff a letter, of which the following is a copy:

"Office Columbus Rolling-Mill Company, manufacturers of railroad iron, room 8, Desblen Block, West Broad St.

"COLUMBUS, O., *Dec. 8th*, 1879.

"Chas. F. Hatch, General Manager M. and St. L. R'y, Minneapolis, Minn.

"D'R SIR: Your favor of the 5th just at hand. We do not make steel rails. For iron rail, we will sell 2,000 to 5,000 tons of 50 lbs. rails for fifty-four ($54) dollars per gross ton, for spot cash, F. O. B. cars at our mill, March delivery, subject as follows: In case of strike among our workmen, destruction of or serious damage to our works by fire or the elements, or any causes of delay beyond our control, we shall not be held accountable in damages. If our offer is accepted, shall expect to be notified of same prior to Dec. 20th, '79.

"Yours truly, &c.,

"H. A. HARRISON. *Sec'y.*"

These are the telegram and letter in the order in which they are introduced in this proceeding, at the time they claim the contract originated. This is the plaintiff's view of the case. They claim that on the 19th December, the plaintiff wrote and sent to the defendant the following telegram:

187 "To the Columbus Rolling-Mill Co.:

"Please enter our order for 2,000 tons of rails, as per your letter of the 6th. Please forward written contract. Reply.

"(Signed) C. F. HATCH."

It is admitted by counsel for defendants and for the plaintiffs that the date of the letter referred to is called the 6th instead of the 8th, by mistake, and what they refer to was the letter of the Columbus Rolling-Mill Company of the 8th to the plaintiff in the case. They claim that the telegram of the 5th, the letter of the 8th, and the telegram of the 19th, taken together, constitute a contract between the parties; that the telegram of the 19th was an acceptance of the offer contained in the letter of the 8th of December.

On the part of the defendants, it is objected that the telegram of

the 19th does not accept the terms of the proposition contained in the letter of the 8th; that in that letter the number of rails proposed is from 2,000 to 5,000 tons; and that it was wholly with the defendants, who made the proposal, to determine what number of tons he would furnish between those two amounts; and that it was not in the power of the plaintiff, to whom the offer was made, to determine the amounts between the ranges given in the telegram, what number of tons *he* would receive. Enquiry having been made, quote your prices, for from 2,000 to 5,000 tons of iron rails of 50 lbs, and the response having been made that the price of iron rails from 2,000 to 5,000 tons was $54.00, the person to whom the offer was made had a right to make the election as between
188 those two figures the number of rails he would take; and having made the election, and embodied that in his acceptance of the proposal, it was in law legal and proper acceptance, so far as that is concerned of the proposal.

If the contract had been entered into between the parties, and that question had been left open, or if they had simply accepted the proposition generally, without limiting the number which they would take, then undoubtedly the law would be as is contended for by the learned counsel for defendant. It would then have been in the power of the defendant to have determined what number of tons of rails he would have delivered, ranging between 2,000 and 5,000 tons; but the plaintiff, to whom the offer was made, having designated and determined how many they would take, that made the acceptance, so far as that part of it was concerned, good and sufficient.

It is said, however, that in addition to that there is a new term, incorporated into this offer, and that is, "Please forward written contract." In response to that, it is said by the counsel for the plaintiff, that that is not incorporating a new term; that the acceptance of the offer is upon its terms as incorporated in the offer, and that this is simply a request that a written contract might be forwarded, so that they might have before them the evidence of the terms and conditions of the contract, which was completed by the acceptance of the terms which had been proposed. There is some difficulty in determining precisely the effect of that condition, and whether it is wholly and entirely for the court to construe and give it ef-
189 fect, or whether it may be taken in connection with the other facts in determining the intent of the party in transmitting this telegram. For the purpose of the case, as it now stands, however, the conclusion which I have come to is, that there is not a new term added to this offer; that the acceptance of the offer by designating the number within the range which the party to whom the offer was made would take, as per letter, including terms, is a sufficient acceptance, and that this does not impose any additional term to the offer, so that it would be considered as a complete acceptance of the offer, although this addition was to the telegram. It is said, however, by the defendant, that prior to this telegram of the 19th, to wit, on the 16th the plaintiff had rejected this offer, and that having once rejected it, it was not in the power of the plaintiff

to accept the offer after that date, and as evidence of rejection they rely on the following telegram:

"To W. A. Harrison, Sec'y Rolling-Mills:

"Please enter our order for 1,200 tons rails, March delivery, as per your favor of the 8th.

"Please reply.

"CHAS. F. HATCH,
"*Gen. Man. M. & St. L. R. R.*"

And on the 16th day of December, 1879, the plaintiff wrote and mailed to the defendant a letter, of which the following is a copy:

"Minneapolis and St. Louis Railway, Chas. F. Hatch, Gen. Man.

MINNEAPOLIS, MINN., *Dec. 16th*, 1869.

190 "W. A. Harrison, Esq., Sec'y Rolling-Mill Co., Columbus, O.

"DEAR SIR: Yours of the 8th duly came to hand. I telegraphed you to day to enter our order for 1,200 (twelve hundred) tons fifty (50) lb. iron rail for next March delivery at fifty-four ($54) dollars f. o. b. cars at your mill. Please send contract; also please send me templet of your fifty (50) lb. rail. Do you make splices? If so, give me prices for splices for this lot of iron.

"Yours, truly,

"CHAS. F. HATCH, *G. M.*

It is a well-settled principle of law that, in order to constitute the acceptance of a contract, the acceptance must be of the proposition as offered, for there can be no contract unless there exists the assent of the minds of the parties to the same terms and conditions; there must be a coming together, an agreement of minds upon the same terms and upon the same proposition, or else there is no contract. It is said by the plaintiff that this telegram and the letter may be treated as an acceptance of the proposition, or possibly a partial acceptance of the proposal in this that, as a part of the 2,000 tons you propose to sell, we now direct you to place our order on your book for 1,200 tons; but that if this be not so, it may be treated as an independent proposition to the defendant to place upon its books the plaintiff's order for 1,200 tons of iron rails without any reference to the offer which had been made of from 2,000 to 5,000 tons. If this be so, then, as a matter of course it could not be considered in connection with the offer of the rolling-mill as affecting the
191 proposition one way or the other, for if it be a separate and distinct order for 1,200 tons of iron it has no connection with that proposition. It could not be argued that it was an acceptance of it, nor could it be argued that it was in any sense a rejection of it, because it must stand upon an independent basis without any reference whatever to the proposition which had been made by the rolling-mill. And that is the difficulty that I have had in my mind in regard to the instruction which I should give the jury upon this branch of the case. I think there can be no serious question as to the law upon this subject that a mere offer

to modify the terms of a proposition should not be construed to be a rejection of the terms; that the party would have a right to make an inquiry or to make a proposition to a party, "Can't you modify these terms? Can't you change either the quantity at the time of payment or some other important term as connected with the proposition? This is recognized in the case of Stevenson *vs.* McLean, and in a number of other cases which we might refer to, but to which it is unnecessary to refer at this time. While this is the case, I think the law is settled by the weight of authority that, if the reply is not in the nature of an inquiry or in the nature of a suggestion or modification, but is a counter-proposition to the one which has been offered, the legal effect of that counter-proposition, if it be clearly so, is in law a rejection of the proposition which has been made, and I think it is well settled that if there be such a rejection as that it ends the right of the person
192 to whom the offer has been made. I may simply refer to the language of Parsons on that question, which I think is clearly in support of the doctrine which I announce: "There are cases where the answer, either in words or in effect, departs from the proposition or varies the terms of the offer, or substitutes for the contract tendered one more satisfactory to the respondent. In these cases there is no assent and no contract. The respondent is at liberty to to accept wholly or to reject wholly, but one of these things he must do; for if he answers, not rejecting but proposing to accept under some modifications, this is a rejection of the offer. The party making the offer may renew it, but the party receiving it cannot reply excepting with modifications, and when these are rejected, again reply, accepting generally, and upon his acceptance claim the right of holding the other party to his first offer." While it is well said by learned counsel for the pl'ff that in the case of the National Bank *versus* Hill, it may not have been necessary to have announced the proposition which the learned justice in that case announced upon this branch of the case, still, coming from the high source it does, we must give it great weight, and that is as clear as the proposition laid down by Mr. Parsons: "A proposal to accept or acceptance upon terms varying from those offered, is a rejection of the offer." National Bank *vs.* Hill, 101 U. S., p. 50. Upon that branch of it it leaves simply this question, gentlemen, and that is one to be de-
193 termined by the court: Was there a modification of the terms of this contract, the material terms of it? for I admit there might be some terms which were wholly immaterial, and which had no connection whatever with the terms of the contract which might not justify the court in giving to the acceptance the character which these offers give it. Before proceeding to that branch of the case I was about to observe that I think the case of Stevenson *vs.* McClean is in support of the proposition laid down by Parsons and that announced by Justice Swain; for while the learned justice in the case recognized that there might be suggestions or inquiries about modification, he does not in the slightest impugn the doctrine of the case of Hyde *vs.* Rench, but draws the distinction clearly between the two cases, leaving, as we understand it by his decision, the authority

of the case of Hyde *vs.* Rench undisputed. Was this, then, a material term or condition of this contract? The proposer had a right to say that he would make a contract for a certain number of tons of iron, ranging between 2,000 and 5,000. It may have been a very important matter to him that he should have sold not less than 2,000. It may have operated very much upon the price which he fixed upon that it should be taken in quantities not less than 2,000; therefore he had a right to fix the terms, and the acceptance of the proposition must have been in the terms of the offer, and an acceptance of 1,200 tons would not be an acceptance of an offer of 2,000 tons; for,
194 so far as you know, or so far as I know, it may have had a very material influence upon the price at which he had offered this iron. Therefore, in law, the offer or direction of the party to book its order for 1,200 tons was the offer of a separate and independent proposition, and in the light of the authorities which I have read that was a rejection of the offer which had been made to the party. That leaves, however, the question whether, taking all the testimony in the case, it was the purpose and intention of the party in making this offer to make it as an acceptance to that extent of the offer which had been made by the party originally, or whether it was an independent order to book independently 1,200 tons of iron. The terms of the telegram are, "Please enter our order for 1,200 tons of rail, March delivery, as per your favor of the 8th; please reply." That would indicate that it referred to the proposition that had been made on the 8th. In the letter of the 16th there is no reference at all to the terms of the 8th, excepting the quotation of these terms, which are quoted literally. It is a matter of inference to be drawn from both these and the other telegrams in the case. Whether this be an independent order, without reference to its being in the nature of an acceptance of the offer of the 8th—that is, "that I take it under that order; I am willing to take 1,200 tons, without any reference to the fact, at those terms, which are named independently of the 2,000, leaving it open until I can further consider, and then accept it or reject it;" that is a matter of inference which is to be determined.
195 And then, in addition to that, it is claimed by the plaintiff that prior to the 16th, on the 15th, a telegram was sent from Washington by Gov. Washburn to this managing agent, saying, in substance, that he thought he had better accept from 1,000 to 1,200 tons of the iron which had been offered them at Columbus; and that, in connection with the others, is a matter to be taken into consideration in determining the fact whether this letter and this telegram of the 16th, relative wholly to the offer of the party to deliver from 2,000 to 5,000 tons of iron, contained in the letter of December 8th, or whether it was an independent and separate and distinct proposal, without any reference to it. For the present, that part of it I shall leave for the determination of the jury as to the intent of the party, for it may consist of the intent. There is enough upon the facts, according to the view I take of it, to prevent the court from determining absolutely the effect that these four telegrams have upon that question. If it be found that this telegram and this letter was a reply to the offer of the 8th, then it was submitting a new propo-

sition, which, in law, amounted to a rejection of the first proposition. And it was not in the power of the plaintiff after that to have accepted the proposition as offered originally. If it be found that it was a separate and independent order, without any reference to that, to book 1,200 tons, then it would not have the effect of a rejection of the offer. If you should find that it was a rejection of the offer, then your verdict must be
196 in favor of the defendant, for in law the plaintiff had no right so to accept. But if you find that it was an independant order without any reference to that in any way whatever, then, if the plaintiff has complied with his portion of the contract and has *sufficient* damages, you will determine what these damages are. The general rule of law in regard to contracts for the sale and delivery of personal property, where actions are brought to recover damages for their violation, is that the party is entitled to recover the value of the article at the time and place of delivery, subject to a deduction of the amount which he was to pay. In order words, he is entitled to recover the difference between the market value of the article at the time and place where it was to be delivered and the amount to be paid for it. That is the general rule of law. But if you find that there was a general market price for iron in the city of Columbus during the month of March, and that market price was greater than the contract price for this iron, then the plaintiff would be entitled to the difference between that market price and the contract price, if there was such a difference.

If you find there was no market price for the iron at the city of Columbus during the month of March, then you are at liberty to take the market price of the nearest accessible point, if there was such a market price, at which the rails could be produced, adding to it, if there should be a difference in the distance, the cost of transportation (to the city of Columbus).

197 If there was no market price at Columbus or at any other convenient point during the month of March, and the articles contracted for were of such character that it was necessary, in order to secure them, that the party should make a contract before that time, then you are at liberty to take into consideration what it would have cost at a period so near the month of March that parties could have procured the article, and what the price would have been then for articles of that character by the necessity of the case. It is said by the defendant that the plaintiff must have shown that he was here, and willing and ready to receive the iron, and to pay for it according to the terms of the proposition. If the defendant prior to the time provided for the delivery of the iron had notified the plaintiff that he would not fulfill the contract, and refused to fulfill it, and no notice had been given the plaintiff before the period for delivery as provided in the proposition, then the plaintiff was under no necessity of being in the city of Columbus, or being prepared with his cars or prepared with his money to pay for it; that relieved him of any responsibility of that character.

If, however, the plaintiff had no notice that the defendant had refused to fulfill the contract and the plaintiff claimed a contract ex-

isted, and the defendant denied the existence of such contract, the plaintiff must have been ready and must have been prepared to comply with his part of the contract. I may say, in addition, that the defendant had the entire month of March to
198 deliver the iron, or at least he had so much of it in which he could have delivered it. If he could have delivered it all in a single day he had the right to deliver the entire amount of that iron on a single day during the month of March, from the first day of March, inclusive. If it would have required a longer time to deliver it in the ordinary course of their business, then they would have that much time; they could have taken 2 or 5 or 10 days to deliver it. They would have so much of the month of March to the last of it as would have been necessary for making a complete delivery. If you find there was a market price for the iron, you will take into consideration what the market value of the iron was during the time in which they had to deliver it. That would be the amount which the party would be entitled to.

Mr. OLDS: We ask your honor to instruct the jury, in case they find an amount of damages under the rule which your honor has stated, that they would have a right to allow interest from the last day of March, 1880, upon the amount which they find.

The COURT: The jury, in their discretion, may allow interest by way of damages, but in a case of this character you are not entitled to interest as a matter of right.

Mr. OLDS: It was suggested as a question of damages.

The COURT: Yes; wholly. There is nothing in the statutes of Ohio that authorizes interest, but it may be awarded in the way of damages.

199 Mr. CRITCHFIELD: There are two points which I want to call the attention of the court to, to note an exception, so as to save the question: (1) That if the jury find the order for 1,200 tons was intended by the plaintiff as its acceptance of the proposition, it would be regarded as a rejection in law of the proposition; and (2), that if the jury should find that the order for 1,200 tons was an independant proposition, but that it referred to the letter of the 8th, containing the proposition, as to the terms as to price and time of delivery, it would, nevertheless, remain an independant proposition.

The COURT: That if they found, from all the facts in the case, that is the telegram of the 15th, of Gen. Washburn, from Washington city to the managing agent, in regard to the acceptance of that proposition, the telegram and the letter of the parties, if they should find from all these that it was a separate and distinct proposition to them, although they might have referred to it for price, &c., still it could not be treated as a rejection.

Judge JOSEPH OLDS: We desire to except to all the parts of the charge except that part of it in which the court hold that if it was a modified acceptance, an acceptance 1,200 tons instead of 2,000 tons, it was a rejection.

200 Thereupon, after exceptions noted by the parties, respectively, to the charge as given and to the refusal to charge as

requested, the jury retired to deliberate on their verdict, and afterwards returned into court with a verdict for the defendant, whereupon the said plaintiff moved the court to set aside the said verdict, and for a new trial for reasons set forth in and filed with said motion; but the court overruled the said motion and rendered its judgment on said verdict in favor of the said defendant; thereupon the said plaintiff excepted to the said ruling and judgment, and tendered in open court this its bill of exceptions, as well for each and all the exceptions taken during the progress of said trial, and noted at the time in the foregoing report of the testimony as the exceptions to said charge, verdict, judgment, and motion for a new trial, and prayed that its said bill of exceptions might be allowed, signed, sealed, and made a part of the record in this case; all of which is now done accordingly.

[SEAL.] PHILIP B. SWING,
*U. S. District Judge, sitting as Circuit Judge in Circuit Court.*

201 THE UNITED STATES OF AMERICA, }
*Southern District of Ohio,* } *ss:*

I, William C. Howard, clerk of the circuit court of the United States, within and for the southern district of Ohio and the eastern division thereof, do hereby certify that the foregoing is a true and complete transcript of the proceedings had by and before said court in the above-entitled cause, wherein The Minneapolis and St. Louis Railway Company is plaintiff and The Columbus Rolling-Mill Company, defendant, as the same appears of record in said court.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at Cincinnati, O., this 10th day of April, A. D. 1883.

[Seal of the Circuit Court, Southern Dist. of Ohio.]

WILLIAM C. HOWARD, *Clerk.*

202 THE UNITED STATES OF AMERICA, *ss:*

To the Columbus Rolling-Mill Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of Ohio, wherein The Minneapolis and St. Louis Railway Company is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, this seventh day of September, in the year of our Lord one thousand eight hundred and eighty-three.

[Seal of the Circuit Court, Southern Dist. of Ohio.]

JNO. BAXTER,
*U. S. Circuit Judge for the 6th Circuit.*

203 Received this writ at Columbus, Ohio, at 3.45 o'clock p. m., on the 11th day of September, A. D. 1883, and on the same day served the within "The Columbus Rolling-Mill Company" by delivering a true copy of this writ at the residence of S. Churchill, president, at 5.30 o'clock p. m., and by delivering a true copy of this writ personally to W. S. S. Rodgers, secretary, at 4.40 o'clock p. m., of the above named Columbus Rolling-Mill Company.

LOT WRIGHT,
*U. S. Marshal.*
By J. A. ULLERY, *Deputy.*

| | |
|---|---|
| 2 services | 4 00 |
| 2 copies | 1 00 |
| 2 miles | 12 |
| | $5 12 |

To correct any defects (if there be any) in the service of the within writ and citation as above stated, I again, on this 19th day of September, A. D. 1883, served said writ and citation on the within named corporation "The Columbus Rolling-Mill Company," by delivering (at 4.30 p. m.) personally to S. Churchill, the president of said corporation, a true and duly certified copy of the within writ and citation, and by delivering (at 4.40 o'clock p. m.) personally to W. S. S. Rodgers, the secretary of said corporation, a like true and duly certified copy of said writ and citation.

LOT WRIGHT,
*U. S. Marshal.*
By J. A. ULLERY, *Deputy.*

[Endorsed:] 111. 9, 11, '83, 3.45 p. m. United States circuit court, southern dist. of Ohio, eastern division. No. 3. The Minneapolis & St. Louis Railway Company *vs.* The Columbus Rolling-Mill Co. Citation to defendant in error. Filed ——, 18—. ——, clerk.

204 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the judges of the circuit court of the United States for the southern district of Ohio, Greeting:

Because in the records and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court, before you, between the Minneapolis and St. Louis Railway Company and the Columbus Rolling-Mill Company, a manifest error hath happened to the great damage of the said Minneapolis and St. Louis Railway Company, as by its complaint appears. We being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at the city of Washington on the second Monday of October

next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the seventh day of September, 1883, in the year of our Lord one thousand eight hundred eighty-three.

[Seal of the Circuit Court, South'n Dist. of Ohio.]

WM. C. HOWARD,
*Clerk of Circuit Court of the U. S., S. D. O.*

205 [Endorsed:] United States circuit court, southern dist. of Ohio, eastern division. No. 3. Minneapolis & St. Louis Railway Company *vs.* The Columbus Rolling-Mill Co. Writ of error. Filed Sept. 10th, 18–3. W. C. Howard, clerk.

206 *In Error.*

MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY
*vs.*
COLUMBUS ROLLING-MILL COMPANY.

The said plaintiff now comes & says that in the foregoing record and proceedings in this cause there is manifest error, in this, to wit:

I. The said court erred in sustaining the motion of the defendant to strike the amendment to the petition from the files, and in ordering the same to be done.

II. The said court erred in overruling the motion of the plaintiff to set aside & vacate the verdict rendered in this cause, and to grant the plaintiff a new trial for the causes & reasons set forth in
207 said motion, and which causes & reasons are now here assigned for error, as follows:

1st. The said verdict is not sustained by sufficient evidence, and is contrary to the evidence. The verdict should have been for the plaintiff.

2d. The said verdict is contrary to law.

3d. The court erred at the trial of said action in sustaining objections to evidence offered by the plaintiff, and in overruling objections to evidence offered by the defendant, to which rulings by the court exceptions were taken by the plaintiff and noted in the record.

4th. The court erred at the trial of said action in its charge to the jury, in particulars excepted to by said plaintiff at the time, and also by refusing to charge the jury as requested by said plaintiff, to which refusal to charge as requested the plaintiff excepted at the time.

5th. The court erred at the trial of said action in charging
208 the jury that "in law the direction of the plaintiff in its telegram & letter of December 16th, 1879, to the defendant to book their order for 1,200 tons of iron rails was the offer of a separate & independant proposition, and in the light of the authorities

which I have read that was a rejection of the offer which had been made by the defendant," and in charging the jury that "if it be found that this telegram & this letter was a reply to that offer of the 8th of December, then it was submitting a new proposition, which in law amounted to a rejection of the first proposition (referring to defendant's proposition of December 8, 1879), and it was not in the power of the plaintiff after that to have accepted the proposition as originally made," to which charge of the court the plaintiff excepted at the time.

6th. The court erred at the said trial in refusing to charge the jury as requested by the plaintiff as follows: "Should you
209 find that the plaintiff's telegram & letter of December 16, 1879, requesting the defendant to book plaintiff's order for 1,200 tons of iron rails, as per defendant's favor of the 8th, was intended by the plaintiff as an order for 1,200 tons of the 2,000 tons offered by the defendant in its letter of the 8th of December to the plaintiff, such order for 1,200 tons is not in law a rejection of the defendant's said offer, if you further find that the plaintiff did not intend it to be such rejection, but intended to give further order for the residue of said 2,000 tons, in acceptance of said offer prior to December 20th, the time limited in said offer for such acceptance, & did so;" to which refusal of the court the plaintiff at the time excepted.

III. The said court erred in rendering a judgment in favor of said defendant, when it should have been given for said plaintiff.

210 IV. Other errors apparent on the record.

Wherefore the said plaintiff prays that a citation be issued to said defendant, and that the said judgment may be reversed, annuled, and held for nothing, and that the plaintiff may be restored to all things it has lost by reason thereof.

By C. N. OLDS, &
LEANDER J. CRITCHFIELD,
*Pl'ff's Att'ys.*

Endorsed on cover: S. Ohio C. C. U. S. No. 282. The Minneapolis and St. Louis Railway Company, plaintiff in error, *vs.* The Columbus Rolling-Mill Company. Filed 14th September, 1883.